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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 377

HIRAM R. EDWARDS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT**

PETITION FOR CERTIORARI FILED AUGUST 26, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

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[fol. a]

[Caption omitted]

[fol. 1]

**IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT**

No. 2078

HIRAM R. EDWARDS, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

**Statement of Points Relied On and Designation of Parts
of Record to be Printed—Filed March 16, 1940**

To the Honorable, the Clerk of the Tenth Circuit Court of
Appeals of the United States of America:

In accordance with, and pursuant to, Rule 13 of the Rules
of this Court, adopted and made effective May 25, 1939,
Appellant files and submits herewith his definite statement
of the points on which he intends to rely and of the parts of
the record which he thinks necessary for the consideration
thereof, with proof of the service of the same on Appellee.

POINTS ON WHICH APPELLANT INTENDS TO RELY

I

That the Court erred in overruling the Demurrer to the
Indictment and as to each count thereof, for the reasons
therein stated, viz.:

(a) That said indictment wholly fails to charge said de-
fendant with a violation of any valid law or statute under
the Constitution of the United States of America.

(b) That said Indictment is not signed by the foreman of
the Grand Jury for the Western District of Oklahoma pur-
porting to have returned said purported Indictment.

(c) That said Indictment and each and every count
thereof, except the Eleventh count, is fatally defective for
duplicity, in that the same alleges and sets forth in each of
the first ten counts thereof divers and sundry different or-

ganizations, companies, trusts and schemes wholly dis-associated from each other.

(d) That said Indictment, and each count thereof, except [fol. 2] count Eleven thereof, is, fatally defective for the reason that the allegations contained in the first count of said Indictment pertaining to the representations and statements made and to be made by the defendants are not properly negatived, said allegations being incorporated by reference in the other counts of said indictment.

(e) That Count 3 of the Indictment, which attempts to allege a violation of Section 17 (a) of the Securities Act of 1933, i. e., the sale of Securities by the use of the mails by means of omissions to state material facts necessary to be stated to make the statements made, in the light of the circumstances under which they were made, not misleading; is defective and the same should be quashed for the reason that the same is made up entirely of conclusions of the pleader and the defendant is not apprised of any fact or facts upon which to base his defense with respect to the allegations to the effect that various omissions were made of material facts, said count of the Indictment wholly failing to state wherein the omissions complained of were material and what the circumstances were under which such omissions were made.

(f) That Counts 4 and 5 of the Indictment were defective and fail to state a cause of action or charge of a violation of any laws of the United States of America. In this connection said counts attempt to charge a violation of Section 5 (a) (1) of the Securities Act of 1933, in substance to the effect that said defendants used the United States mail in the sale of certain securities without having in effect a registration statement filed with the Securities and Exchange Commission, neither of said counts alleging that the securities so sold by said defendants were not in the class of securities exempted from registration under Section 3 of the Securities Act of 1933 and the Rules and Regulations of the Securities and Exchange Commission exempting various classes of securities as provided for by Section 3 (b) of said Securities Act of 1933.

(g) That Counts 6, 7, 8, 9 and 10 of the Indictment wholly fail to state a cause of action or charge of a violation of any valid and existing statute of the United States by or against

said defendant, said counts attempting to charge a violation of Section 338, Title 18, United States Code.

(h) That Count 11 of said Indictment, to-wit: a charge of conspiracy, fails to properly state a cause of action against [fol. 3] or charge of a violation of law by this defendant, and is defective in that said count charges the defendants with a conspiracy to violate the Securities Act of 1933 "by selling said securities by use of the United States mails without having in effect a registration statement, filed with the Securities and Exchange Commission", said count wholly failing to charge that the securities so sold were not of the class of securities exempted from registration under Section 3 of the Securities Act of 1933 and the Rules and Regulations of the Securities and Exchange Commission promulgated under said Act exempting divers and sundry other classes of securities from registration.

II

That the Court erred in overruling appellant's plea in bar to the prosecution and in refusing to hear testimony and evidence in support thereof and in refusing to compel the Government to produce a transcript of the proceedings before the Securities and Exchange Commission in which defendant (appellant) testified under oath, pursuant to subpoena and under compulsion, and after having claimed his immunity against self-incrimination, for the reasons stated in defendant's said plea in bar and motion.

III

That the judgment of the Court is contrary to law.

PARTS OF THE RECORD APPELLANT THINKS NECESSARY

1. Indictment.
2. Demurrer to Indictment.
3. Plea in Bar of defendant (Appellant) Edwards and application for production of transcript of evidence.
4. Motion of Government to strike plea in bar and objection to production of transcript of evidence.
5. Opposing affidavit of Government to plea in bar and application for production of transcript of evidence.
6. Motion of defendant (Appellant) Edwards to strike opposing affidavit in plea in bar.

7. Orders and Minutes of the Court in connection with the following:

[fol. 4] (a) Demurrer to Indictment.

(b) Plea in bar of defendant and application for production of transcript of evidence.

(c) Motion of Government to strike plea in bar.

(d) Opposing affidavit of Government.

(e) Motion to strike opposing affidavit.

8. Plea of Not Guilty of defendant (Appellant) Hiram R. Edwards.

9. Plea of Nolo Contendere of Hiram R. Edwards.

10. Order of Dismissal of said cause as to defendant, R. B. Binger.

11. Sentence and Judgment of the Court.

12. Notice of Appeal under Rule III.

13. Assignment of Errors.

Respectfully submitted, J. Forrest McCutcheon, 800 Perrine Building, Oklahoma City, Oklahoma, Attorney for Appellant, Hiram R. Edwards.

Service of the foregoing accepted and acknowledged this 15th day of March, 1940.

Chas. E. Dierker, by Asst. John Brett, United States Attorney for the Western District for Oklahoma.

[File endorsement omitted.]

[fol. 5]

[Caption omitted]

IN DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 12682. Criminal

UNITED STATES OF AMERICA, Plaintiff,

vs.

HIRAM R. EDWARDS, Defendant

INDICTMENT—Filed November 15, 1938

Violation:

Section 77, e and q, Title 15, U. S. C. A.

Section 338, Title 18, U. S. C. A.

Section 88, Title 18, U. S. C. A.

At the January, 1938 Term of the District Court of the United States for the Western District of Oklahoma, begun

and held at the city of Oklahoma City, Oklahoma, in said District, on the first Monday of January in the year of our Lord one thousand nine hundred thirty-eight the Grand jurors of the United States of America; within and for said District, having been duly summoned, impaneled, sworn, and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America, committed within said District in said State of Oklahoma, upon their oaths aforesaid, in the name and by the authority of the United States of America, do find and present:

1. That before and at the several times of the committing of the several offenses in this indictment hereinafter mentioned, Hiram R. Edwards and R. B. Binger, whose more full, true and correct names are to the Grand Jurors unknown, hereinafter called defendants, each of them then and there well knowing the facts in this indictment set forth, on and after the 1st day of May, 1936, unlawfully, wilfully, [fol.6] knowingly and feloniously, in the sale of certain securities, hereinafter described, by use of the United States mails, did employ and intend to employ a device, scheme and artifice to defraud Harper L. Proctor, Harvey K. Rose, E. H. McKibben, Willard W. Penry, W. E. Mitchell, R. H. Stewart, Holley B. Osmun, Jessie B. DeLaMater, Cash S. Clayton, J. B. Felty, D. M. Soules, Christine Baier, John Ferber, L. B. Shaw, Matthew Collina, Frank W. Boyd, Mrs. S. A. Rowland, Stephen L. Coffin, E. S. Curtis, Joseph Eklund, Leo Adams, I. N. Munson, Walter Schoonmaker, Hardin Williams, and divers and sundry other persons to your Grand Jurors unknown and too numerous to mention herein, said persons being hereinafter referred to as the persons to be defrauded, that is to say from the numerous classes of persons who could be induced to invest their monies and property in the securities to be sold by said defendants; said scheme, artifice and device to defraud the persons to be defrauded being in substance and effect as follows:

2. That on or about the first day of May, 1936, the defendants organized, controlled and created a business trust under the laws of the State of Oklahoma known and referred to as H. R. Edwards Comanche County, Oklahoma, Trust, and also at some times referred to as the Lucky Indian; the defendant Hiram R. Edwards was designated as sole trus-

tee of said trust and as such trustee was vested with title to an undivided one-half interest in an oil and gas lease covering the N/2 of the NE/4 of Section 32, Twp. 2N., Range 10W, in Comanche County, Oklahoma; said trust was capitalized at eight hundred units with a stated or par value of \$10.00 per unit.

3. That as a further part of said scheme, artifice and device to defraud and on or about the 11th day of September, 1936, said defendants organized, controlled and created a business trust under the laws of the State of Oklahoma known and referred to as Edwards Indian Chief Trust; the defendant Hiram R. Edwards was designated as sole trustee of said trust and as such trustee was vested with title to an undivided one-half interest in oil and gas leases covering the W/2 of the SE/4 of Section 25, Twp. 2N, Range 9W, and SE/4 of the SW/4 of the SE/4 and the W/2 of the SW/4 of the SE/4 of Section 30, Twp. 2N, Range 8W, and the E/2 of the NW/4 and the SE/4 of the NE/4 and the NW/4 of the SW/4 of Section 31, Twp. 2N, Range 8W, and the W/2 of the NW/4 of Section 5, Twp. 1N, Range 8W and [fol. 7] the NE/4 of the NW/4 of Section 6, Twp. 1N, Range 8W, and the NW/4 of the NE/4 and the SE/4 of the NE/4 and the W/2 of the NE/4 of the NE/4 and the SE/4 of the NE/4 of the NE/4 of Section 1, Twp. 1N, Range 9W, in Stephens County, Oklahoma; said trust was capitalized at fifteen hundred beneficial interests with a stated or par value of \$10.00 each.

4. That as a further part of said scheme, artifice and device to defraud and on or about the 25th day of November, 1936, said defendants organized, controlled and created a business trust under the laws of the State of Oklahoma known and referred to as Indian Chief Additional Development Trust; the defendant Hiram R. Edwards was designated as sole trustee of said trust and as such trustee was vested with title to an undivided one-half interest in the oil and gas leases described about in the last succeeding paragraph pertaining to Edwards Indian Chief Trust, said leases being located in Stephens County, Oklahoma; said trust was capitalized at fifteen hundred beneficial interests with a stated or par value of \$10.00 each.

5. That as a further part of said scheme, artifice and device to defraud and on or about the 30th day of January, 1937,

said defendants organized, controlled and created a business trust under the laws of the State of Oklahoma known and referred to as Indian Chief Protection Lease Trust; the defendant Hiram R. Edwards was designated as sole trustee of said trust and as such trustee was vested with title to oil and gas leases covering the N/2 of the E/2 of the NE/4 of Section 25, Twp. 2N, Range 9W, and the NE/4 of the SE/4 and the E/2 of the NW/4 of the SE/4 of Section 2, Twp. 1N, Range 9W, and the E/2 of the SW/4 of Section 24, Twp. 2N, Range 9W, and the E/2 of the SE/4 of Section 26, Twp. 2N, Range 9W, and the W/2 of the SW/4 of the NE/4 of Section 1, Twp. 1N, Range 9W; and the E/2 of the SE/4 of Section 23, Twp. 2N, Range 9W, and the NW/4 of the NW/4 of Section 31, Twp. 2N, Range 8W, in Stephens County, Oklahoma; said trust was capitalized at two thousand beneficial interests with a stated or par value of \$10.00 each.

6. That as a further part of said scheme, artifice and device to defraud and on or about the 6th day of May, 1937, the defendants organized, controlled and created a business trust under the laws of the State of Oklahoma known and referred to as Edwards Combined Trust; that the defendant [fol. 8] Hiram R. Edwards was designated as sole trustee of said trust and as such trustee was vested with title to an undivided eleven-sixteenths interest in an oil and gas lease covering twenty acres of land out of the Lewis Knight Survey, Abstract No. 324, in Jack County, Texas; said trust was capitalized at five thousand three hundred beneficial interests having a stated or par value of \$5.00 each.

7. That as a further part of said scheme, artifice and device to defraud, said defendants for the purpose and with the intent of selling to the persons to be defrauded certain securities, to-wit, units or certificates of beneficial interest in the trusts above described, would and did send to said persons to be defrauded by use of the United States mails, various letters, pamphlets, and circulars in which false, fraudulent and misleading representations and statements were made and repeated, a portion of said false, fraudulent and misleading representations and statements being of the following tenor:

(a) On and after the 24th day of June, 1936, said defendants represented and stated to the persons to be defrauded that a 200-barrel per day oil well had been completed on a

nearby lease referred to as the English Lease, and that said well proved that commercial production would be found on the Lucky Indian lease, title to an undivided one-half interest in which was vested in H. R. Edwards Comanche County, Oklahoma, Trust, whereas, in truth and in fact, as said defendants, and each of them, then and there well knew, said well referred to as having been completed on the English Lease had not been completed as a 200-barrel per day well, but had been completed on or about January 1, 1936, as approximately a 100-barrel per day well, and the production of said well had decreased to less than thirty barrels per day by June 24, 1936, and that said well did not prove that the Lucky Indian lease would produce either oil or gas in commercial quantities; that the Lucky Indian Lease was already proven for commercial production, whereas in truth and in fact, as the defendants, and each of them, then and there well knew, said lease was not proved for commercial production; that said H. R. Edwards Comanche County, Oklahoma, Trust owned a one-half interest in three oil producing wells which had been drilled upon said Lucky Indian lease, whereas, in trust and in fact, as the defendants and each of them, then [fol. 9] and there well knew, said Trust did not own said wells and said wells were not producing oil or gas.

(b) On and after September 15, 1936, said defendants represented and stated to the persons to be defrauded that the well which had been drilled on the lease, title to an undivided one-half interest in which was vested in said H. R. Edwards Comanche County, Oklahoma, Trust was a good, commercial gas well, whereas in truth and in fact, as the defendants and each of them then and there well knew, said well had not encountered and was not capable of producing gas in commercial quantities.

(c) On and after October 6, 1936, said defendants represented and stated to the persons to be defrauded that the well which had been drilled to a depth of about 980 feet on the oil and gas lease, title to an undivided one-half interest in which was vested in the H. R. Edwards Comanche County, Oklahoma, Trust, had discovered oil in commercial quantities and that because of such discovery, the persons who had theretofore acquired units or certificates of beneficial interest in said Trust on the basis of the agreed down payment of \$5.00 per unit at the date of purchase, and an additional payment of \$5.00 per unit to be paid at the time oil was dis-

covered under said lease in commercial quantities, should remit to said defendants the balance of \$5.00 per unit, whereas in truth and in fact, as the defendants, and each of them, then and there well knew, said well had not found either oil or gas in commercial quantities.

(d) On and after the 7th day of December, 1936, said defendants represented and stated to the persons to be defrauded that the well which had been drilled on the lease, title to an undivided one-half interest in which was vested in the H. R. Edwards Comanche County, Oklahoma, Trust was a nice well, and that they had bailed almost pure oil from the hole mixed with a little mud, whereas in truth and in fact, as said defendants, and each of them, then and there well knew, said well had not encountered either oil or gas in commercial quantities, and the fluid which had been bailed from the hole consisted of about three barrels of oil to 100 barrels of water.

(e) On and after August 13, 1936, said defendants represented and stated to the persons to be defrauded that Edwards Indian Chief Trust owned a block of leases covering 500 acres, the leases in which block were contiguous to the [fol. 10] tract upon which said defendants were then drilling a well, whereas in truth and in fact, as the defendants and each of them then and there well knew, said leases were scattered over six sections of land and were not contiguous to the lease upon which said well was being drilled.

(f) On and after August 26, 1936, said defendants represented and stated to the persons to be defrauded that the leases, title to an undivided one-half interest in which was vested in the Edwards Indian Chief Trust, were proven for the production of oil and gas, whereas in truth and in fact as the defendants, and each of them, then and there well knew, said leases were not proven for the production of either oil or gas; that said oil and gas leases were surrounded on three sides by close up producing wells and that a 7000 foot test, "jam up against", said leases had encountered commercial production, whereas in truth and in fact, as the said defendants, and each of them, then and there well knew, there was no commercial oil or gas production close to said leases, and the 7000 foot test was more than a mile and one-half from the well which said defendants were drilling upon said leases.

(h) On and after December 1, 1936, said defendants represented and stated to the persons to be defrauded that the funds to be realized from the sale of units in Indian Chief Additional Development Trust were needed for and would be used to defray the expense of making a Schlumberger test in the well which had been drilled on the lease, title to an undivided one-half interest in which was vested in Edwards Indian Chief Trust, and to drill an additional well on said lease, whereas in truth and in fact, as the defendants, and each of them then and there well knew, said funds would not be and were not used for the purpose of making a Schlumberger test or for drilling an additional well, and no such test was made and no such additional well was drilled; that a Halliburton test had been made on said well which indicated that said well had encountered commercial production at a depth of about 2500 feet, whereas in truth and in fact, as said defendants and each of them then and there well knew, said Halliburton test did not indicate the presence of any producing horizon at any depth whatever; that said well had encountered commercial production in large quantities, whereas in truth and in fact, as said defendants and each of them then and there well knew, said well had not encountered commercial production.

[fol. 11] (i) On and after February 6, 1937, said defendants represented and stated to the persons to be defrauded that the well which was being drilled on the oil and gas lease, title to an undivided one-half interest of which was vested in the Edwards Indian Chief Trust, had encountered a gas bearing horizon and that the gas pressure nearly took the well away from them, whereas in truth and in fact, as said defendants and each of them then and there well knew, said well had not encountered gas in sufficient quantities to in any way endanger or bring about the loss of said well.

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That the defendants on or about the 18th day of February, 1937, at Frederick, in the State of Oklahoma, Western District of Oklahoma, and within the jurisdiction of this Court, for the purpose and with the intent of employing said device, scheme and artifice to defraud one of the persons to be defrauded, to-wit: Harper L. Proctor, unlawfully, willfully and feloniously, in the sale of certain securities, to-wit: units or certificates of beneficial interest in Indian

Chief Protection Lease Trust, by the use of the United States mails, did employ said device, scheme and artifice to defraud in violation of Section 17(a) (1) of the Securities Act of 1933, as amended (Section 77q, Title 15, U. S. C. A.), in the following manner:

Said defendants on or about said 18th day of February, 1937, placed and caused to be placed in the post office of the United States of America at Frederick, Oklahoma, a certain four page letter enclosed in an envelope with the necessary postage prepaid thereon, to be sent and delivered by the post office establishment of the United States of America to said Harper L. Proctor at 325 Peninsular Life Building, Jacksonville, Florida, said letter commencing with substantially the following words, to-wit:

"Dear Dr. Proctor:"

"I am sending you another late-at-night letter. I have just come in from 'Indian Chief'. It is now nearly four o'clock in the morning, and I am desperately tired—but, I am happy. So happy that I could not even think of sleeping until I wrote you the good news."

And said letter closing with substantially the following words, to-wit:.

[fol. 12] "I want everyone of my associates to be in a position to cash in for the Biggest Possible Amount. These \$10.00 Units may return you 10—20—40—or 100 for one in the next few days—for, Partners, we have hit! I am confident of a new oil field being born in 'Indian Chief'—and it belongs to you and me. I will expect your reply by return mail or wire for from one to fifty \$10.000 Units.

"Your friend and Partner in the field.

(Signed) H. R. Edwards."

All of which acts of the said defendants and each of them were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Two

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That the defendants named in the first count of this indictment on or about the 1st day of December, 1936, at Fred-

erick, in the State of Oklahoma, in the Western District of Oklahoma, and within the jurisdiction of this Court, so having, as set forth in the first count of this indictment, employed and intended to employ said device, scheme and artifice to defraud the persons to be defrauded, the allegations of the first count of this indictment descriptive of said device, scheme and artifice to defraud, and of the connection of the said defendants therewith including allegations of intent and knowledge on the part of said defendants and each of them, are hereby incorporated in this count by reference to said first count as fully as if here repeated, for the purpose and with the intent then and there upon the part of said defendants and each of them of employing said device, scheme and artifice to defraud one of the persons to be defrauded, to-wit: Harvey K. Rose, unlawfully, wilfully and feloniously, in the sale of certain securities, to-wit: Units or certificates of beneficial interest in said Indian Chief Additional Development Trust, by use of the United States mails, did employ said device, scheme and artifice to defraud in violation of Section 17 (a) (1) of the Securities Act of 1933, as amended, (Section 77q, Title 15, U. S. C. A.) in the following manner:

Said defendants on or about said 1st day of December, [fol. 13] 1936, did place and cause to be placed in the post office of the United States of America at Frederick, Oklahoma, a certain eight page letter, enclosed in an envelope with the necessary postage prepaid thereon, to be sent and delivered by the post office establishment of the United States of America to one of the persons to be defrauded, to-wit: to the said Harvey K. Rose at 850 West Exchange Street, Akron, Ohio, said letter commencing with substantially the following words, to-wit:

"Dear Mr. Rose:

"I have just driven in from 'Indian Chief' to give you the good news—as soon as I write you I will be on my way back to the well—because I believe we are near a Big Success."

and said letter closing with substantially the following words, to-wit:

"Take one—ten—twenty or More of these Units—now."

"They are limited in number—You Must Rush Your Order.

Yours for Bigger Profits,

(Signed) H. R. Edwards."

All of which acts of the said defendants and each of them were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Three

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That said defendants named in the first count of this indictment, then and there well knowing the facts in this indictment set forth, in the sale of securities, to-wit, units or certificates of beneficial interest in Edwards Indian Chief Trust, did by the use of the United States mails obtain money from one of the persons to be defrauded by means of omissions to state material facts necessary to be stated to make the statements made by said defendants to said person to be defrauded, in the light of the circumstances under which they were made, not misleading, in the following manner, to-wit:

That on or about the 9th day of October, 1936, said defendants did send to one of the persons to be defrauded, to-wit: Willard W. Penry, a certain letter with the intent and for the purpose of inducing said Willard W. Penry to purchase certain securities, to-wit, units or certificates of beneficial interest in a business trust organized by said defendants under the laws of the State of Oklahoma and known and referred to as Edwards Indian Chief Trust, said letter being substantially of the following tenor, to-wit:

"Dear Mr. Penry:

"My word is my bond!!!

"You received a letter from me last week—perhaps you are among the scores who have answered that letter—perhaps you were among those who have literally swamped me with replies by every mail—by air-mail—by telegram—

Taking Me At My Word—and putting me to the acid test to Prove My Statements!!”

“I have not had time to check up on my books—I do not know if you were among that number or not—but—again I say—with all honesty and all sincerity—

Will You Be Interested In Making Up To One Thousand Dollars—Or More? At A Cost Of Only \$10 For Each Potential Thousand-Dollar Winning!! In A Short Sprace Of Time That May Possibly Be Measured By Weeks!!

“That is the proposition that I put to you—and to others—in my letter of last week. Scores have answered—scores have agreed to co-operate with me—scores have taken advantage of my offer—to come in with me—And **Make One Of The Boldest And Most Courageous Bids For Big Profits They Have Ever Been Offered!!**

“As I said—I do not know if you were in that number, as I have not had time to check up and see—but—whether you were or not—I write you again. I write you as an honest man who has everything to gain by putting himself to **The Rigid Acid-Test Of Public Approval**—and who says to you again: **I Have A Proposition That Is So Startling That You May Read Every Word Of This Letter In Rank Unbelief—You May Not Be Able To Believe It—I Admit That It Is So Bit That It May Strain Your Belief To The [fol. 15] Breaking Point—Because The Chances For A Big Profit To You Are So Enormous—That You Simply May Not Be Able To Believe Such A Situation Can Come To You!**

“~~But~~ whether you have already joined me—or whether you have not been able to accept my offer—I ask you again to read what I have to say—**Read With An Open Mind—Read With Your Critical Eye Open For Faults And Flaws—Read With The Determination To Pick Out Every Flaw In This Proposition—Then—Decide Strictly Upon Its Merit!!**

“I said at the start of this letter that—‘**My Word Is My Bond**’.

“But I don’t want you to take my word for a single thing I say to you—I want you to **Test What I Say—and Prove For Yourself—and be convinced for yourself that—You Have A Chance Here To Make The Biggest And The Quickest Profit Of Your Lifetime!!**

“And—my friend—when You Make a Big Profit—There are four things that absolutely Must contribute to that Profit-Taking—

(1) The Property Must Be Good—(2) The Profit-Chances Must Be Present—(3) Your Chance To Share Must Be In Your Reach—(4) The Man Who Offers You That Chance Must Be Efficient and Honest!!

“I base this offer to you upon those Four Grounds—and upon no other grounds. This is the apex and climax of my years of experience in the oil business—it is the crowning effort of my life—it is the One Big Chance that I have looked for for years for myself—and I am staking my years of experience upon One Quick Play For The Big Money For Those Who Help Me—For You, If You Choose To Be Among That Number!!

“Remember that I have 500 acres in ‘Indian Chief’—and—Five Hundred Acres Can Be A Mighty Oil Empire, When Successfully Developed.

“Now—let me give you a ‘Picture’—of what I have to offer:

“I have just come in from my ‘Indian Chief’ lease in Stephens County, Oklahoma. I stood upon that lease today [fol:16] under the hot glare of an Oklahoma sun—and I wished that You could have stood by my side—and could have seen with your own eyes, what fell under my gaze.

“I stood on the North boundary of this property—and I asked myself this question: ‘How can I paint a “picture”—how can I describe the location and possibilities of “Indian Chief”—that will show to those whom I have asked to join me in this operation, the marvelous possibilities before us’?

“And I said to myself: ‘If I write You the exact Facts—all the Facts—and nothing but the Facts—then—You Must Believe—because—“Truth Will Always Prevail”—and be its own defender!

“Therefore—as I stood on the North Boundary of ‘Indian Chief’—I determined to try and give you a ‘picture’ of what I saw:

“To the South—just about three miles from the southern boundary of ‘Indian Chief’ was visible in the distance, the mighty forest of derricks of the great Duncan Field. There is a field of 2,500 acres—on which approximately 500 producing wells have been drilled—and which wells have produced around Forty-Five Million Barrels Of Oil—and are

still producing approximately—Two Million Barrels Of Fortune-Making Oil Per Year!!

“What a wonderful field! What Fortunes In Oil have been produced by that field!! What a Fortune For Us—With Wells Of Similar Size On ‘Indian Chief’!!! And—what a thrill it gave my heart to realize that ‘Indian Chief’ is located in the area known as the North Extension Of The Duncan Field!!

“Then—still standing on this North Boundary—I let my eyes go to the Southeast—less than three miles away—even closer than the Duncan Field—I could see the approximate area covered by the Angle & Brogan Gas Field—Which Wells Come In Making Ten To Fifteen Million Cubic Feet Of Wet Gas Per Day—and I thrilled again to the realization that such gas wells, on ‘Indian Chief’—should find a ready and quick market for their product to a big major gas company, whose pipe-lines are already laid across our [fol. 17] property—And Which Company Has Already Assured Me That They Would Purchase Our Gas As Produced!!

“And—still standing on this North Boundary—I looked to the West—where I could see the leases known as the ‘School Land Pool’—Directly Offsetting ‘Indian Chief’—where commercial gas wells are already completed making an initial production of from Five To Fifteen Million Cubic Feet Of Gas Per Day—and, still a little more West—only a little more than a mile from ‘Indian Chief’—Was the ‘Flowers Pool’ whose discovery well made an initial flow of Ten Million Cubic Feet Of Wet Gas, with a rock pressure of 860 pounds!

“And—still standing on this North Boundary—I could see, less than $\frac{3}{4}$ ths of a mile away—the derrick that marks the bringing in of the discovery well of the ‘Johnson Pool’—which well seems to be producing on what I would term ‘Off-Structure’.

“And—still standing on this North Boundary—I could see the top of the great 120-foot steel derrick that marks the test Now Drilling—less than a mile-and-a-half Northeast Of ‘Indian Chief’—which test is reported to be seeking the famous Wilcox Sand—at around 7,000 feet—and around which test—Major Companies Are Reported To Have Purchased One Hundred Thousand Dollars Worth Of Leases—’!

"And—what an additional thrill it gave my heart to realize that the block on which this 7,000-foot test is located—Directly Adjoins 'Indian Chief'—On The East And Northeast!!

"Now—this is the 'picture' that I want to give you:

To the South—the great Duncan Field.

To the Southeast—the Angle & Brogan gas field.

To the West—the 'School Land' and the 'Flowers' Pools.

To the East—The great 7,000-foot test to the Wilcox sand.

"And—remember this—these pools—surrounding us on three sides—are not miles and miles away—they are not what you would call in the 'general area', which might mean [fol. 18] fifteen or twenty miles distant—but—They Are Close-Up—One Of Them Directly Adjoining 'Indian Chief'—And Seem To Prove Unquestionably—That This Lease Is Not In The 'Wildcat' Class—But Is Already As Near A Proven Property As It Is Possible To Imagine Before Actual Drilling!!

"You positively cannot make money unless the producing sands are under your property—and—from the evidences already Known To Me—I am absolutely convinced that such Sands Are To Be Found Under 'Indian Chief'. Let me explain what I mean:

"The geological report that I have on 'Indian Chief' says that Five Sands Underlie This Property. This report also says that the 'School Land Pool' to the West of 'Indian Chief' encountered its heavy gas production at around 1,800 feet. And—I was told by the Superintendent of the 7,000-foot test to the East of 'Indian Chief'—that this test encountered this same sand—at around 1,800 feet—Proving That This Sand Extends East and West—And If Found On Both Sides Of 'Indian Chief'—Then It Surely Must Be Found Under 'Indian Chief'!! That's just plain common sense.

"Then—the 'Johnson Pool' on the North went to a deeper sand—and Is Now Producing Oil, Less Than $\frac{3}{4}$ ths Mile Distant From 'Indian Chief'—at around 2,480 feet—while to the Southeast Of 'Indian Chief' the 'Angle & Brogan Pool' is producing from the same sand proving that—This 2,480-Foot Sand Must Extend North and South—And Under 'Indian Chief'.

"Under such conditions—I claim—that This Is Not A 'Wildcat' Lease—Because The Evidence Points To Two

Producing Sands—From Wells Already Drilled—Whose 'Logs' Are Known!!

"And as I have already stated—a geological report prepared by Roy E. Cooper, Petroleum Engineer, one of the outstanding geologists of Oklahoma, states that—there are Five Known Producing Sands Under 'Indian Chief'—and a portion of his report follows:

'Oil And Gas Resources Under Your Properties'

'There are five known producing sands that underlie your properties'.

[fol. 19] '(1) The James sand found at 1375 to 1,400 feet.

'(2) The flowers sand found at 1880 to 1900 feet.

'(3) The Johnson sand found at 2300 to 2375 feet.

'(4) A stray sand found at 2475 to 2500 feet.

'(5) The Van Clive sand found at 3250 to 3275 feet.

"All these sands should produce oil or gas under your lease'.

"With such statements from a geologist of known standing—and with these Known Producing Pools On Three Sides—to the South and Southeast and to the West—and to the North—and with the 7,000-foot test now drilling to the East on a block directly adjoining our own property, I have no hesitancy in stating that the 'Indian Chief' Property Is Today The Biggest And The Quickest Chance For A Profit Of Tremendous Size That You Ever Saw In All Your Life And All Your Experience In Oil Investments.

"And—I want again to call your attention to two most significant factors: (1) Major companies have already indicated a desire to purchase the properties of 'Indian Chief'—and major companies already own leases practically all around and in every direction around 'Indian Chief'—and—(2) Major Companies are reported to have already purchased around One Hundred Thousand Dollars Worth Of Leases around the test well drilling on the block directly adjoining 'Indian Chief' on the East!!

"Do you think that the big major concerns would be interested in this area unless they were convinced—or had good reasons to believe—that—A Discovery Field Of Major Proportions May Be In The Making In The 'Indian Chief' Area???

"Now—my friend—this is the situation of my properties—you have the whole story. Yet, there are two things I wish to add:

"First—the 7,000-foot test East of 'Indian Chief' is drilling for the famous Wilcox sand. This is the sand that has made the great Oklahoma City Field—the sand that has made the great Logan County field where Carter and Gulf have recently brought in a raging 60,000 barrel gusher—and which sand has made possible some of the biggest [fol. 20] lease sales in this state, including one in the Oklahoma City field where I am told a consideration of around \$300,000 was paid for only 20 acres—which—was an acre price of around Fifteen Thousand Dollars Per Acre! Therefore—no wonder that I am deeply and vitally interested in this 7,000-foot test—and no wonder that the big majors are said to have already bought around \$100,000 worth of 'protection' acreage around this test—because—from this test alone may result—A Fortune Of Magnitude—Of Tremendous Proportions—To Myself And My Associates In 'Indian Chief'!

"And—Second: I have already moved on 'Indian Chief' one of the biggest and strongest rigs I could find—with a magnificent 122-foot steel derrick—and heavy machinery—capable of making a 7,000-foot test for ourselves—if necessary and deemed advisable—and—by the time you receive this letter—we will be spudded in—and perhaps already drilling—for one of the Five Sands reported to exist under 'Indian Chief' by Geologist Cooper.

"I Believe A Few Weeks Or Quick Drilling Will Carry Us Down To One Of These Sands—And That—Unquestionably—We Shall Be Able To Make A Well—Whose Value May Run—Into An Enormous Sum Of Money—For Distribution Among My Associates!!

"Now then—do you want to participate in an operation like this—where—quick success may bring—a return of Hundreds Of Dollars—or—Possibly—Thousands Of Dollars—to You???

"Remember—our 'Trust' has a half-interest in a full 500-acres!!

"You know—as well as I do—what 500 acres should be worth, with a producing well of Gusher Calibre!!

"You know that such acreage, when proven, should sell for an attractive—a most alluring Profit!!

"And—you know that with a reasonable interest in such a property—You Have The Biggest Chance Of A Lifetime To Make A 'Killing-!'

"I have capitalized this half-interest in 500 acres at only 1,500 units—at \$10 per unit—making a total of only \$15,000 capitalization on the one-half interest in the well [fol. 21] and 500 acres—thereby giving us tremendous profit possibilities.

"As I told you in my last letter—interests in the Fowler discovery well of Burkburnett—sold originally at \$100 each—paid holders thereof the amazing sum of Twelve Thousand Dollars—or—\$1,200 for each ten dollars invested.

"I do not believe I am overstating when I say that we have a possibility for profits of enormous size—because—such profits have been made by others from 'Wildcat' leases—and—we have such evidences around us as to lead to the common-sense conclusion that we are practically out of the 'Wild-cat' class—and on property that is almost Proven.

"I believe there are Attractive Profits For You—Here!!

"Yet—I again wish to say that—if you are unable to take a 'gamble' like this—I do not wish you to come in with me. This operation is for those who are able to 'play' for the giant money that a discovery field can bring. And—if you are able and willing—I believe you now have before you the chance you have been seeking—the opportunity you have been wishing would present itself to you—and I say to you—that I sincerely and honestly believe—We Have The Biggest Proposition Of A Lifetime—For A Quick Profit Of Large Size—From A Small Investment.

"Yet I must warn you:

"Unless you take my offer—At Once—I cannot guarantee that your order will be filled for units—because—those who are able to participate are coming in by every mail—And The Limited Number Of Units Will Soon Be Gone.

"I admit that this is the biggest thing I have personally ever had the good fortune to be in on—as I have said before, it is the apex and the climax of my many years in the oil business—I have never had the privilege to participate in a property of this character before—and—scores of new friends and associates—to whom this proposition was presented last week—are also agreeing that—It Is The Biggest [fol. 22] Chance They Ever Had—and—The Limited Number Of Units Available Are Decreasing At Such A Rapid

Rate That I Must Warn You—If You Delay—You Will Be To Late!!

“And—I want to add this: These units are being sold for just one purpose—to finance development of this lease. You can realize that a property of this type—and the drilling of a well of this type—cannot return a large profit to me—I Must Get My Profit From The Same Source As You Get Your Profit—which is—A Completed Well—And A Sale Of This Lease At An Attractive Figure!!

“Now—just a few last words:—

“There are Four things that absolutely Must Contribute to and Profit-Taking (1) Good property—(2) Good profit—chances—(3) An easy chance for You to share—and—(4) A capable man at the head of it all.

“I have told you about the property—you know what it offers—you can see that it is exceptional in every particular—it looks to be as near a ‘Cinch’ as anything I have ever contacted. I have also told you about the profit-chances. You can see what a regular Whale Of A Profit we stand to make—in the near future.

“And I have also told you how You May Share—at the rate of \$10 per Unit—for as many Units as you care to purchase, if you get in before others take them all.

“But—there is one thing I haven’t told you about—and that is myself:

“I could send you scores of letters. I could tell you how I am trusted by others. I could tell you my credit-rating here in Frederick. I could send you letters showing you what others think of me. But all these mean nothing unless I Make You Money. You can’t buy a new home with recommendations. What You Want Is Results—Cash Money Results!!

“If you want personal recommendations I can give them to you—but—Here Is My Biggest Recommendation:

“Purchase as many Units as you desire in ‘Indian Chief’—make sure that you are protected in this opportunity to the fullest extent while the chance is still open—Then Come [fol. 23] Down Here—Go With Me To The Lease—See The Big Duncan Field To The South—See The Angel & Brogan Field To The Southeast—The Flowers Pool And The School Land Pool To The West—The 7,000-Foot Test To The East—And My Own Big 122-Foot Derrick And Heavy Machinery On ‘Indian Chief’. Talk To Any Person In This Entire Area—Go Over Geological Reports—See The

Proven Gas Fields—And The Proven Oil Fields Around—
And Then—If You Are Not Entirely Satisfied That Every
Word I Have Written You Is True—And That You Have
The Biggest Chance Of Your Lifetime To Make The Kind
Of A Profit I Predict—I Will Refund Every Dime Of Your
Transportation Both Ways Down Here—And I Will Re-
fund Your Money You Paid For Units In 'Indian Chief'!!

"This is the kind of recommendation I offer you---and---
if you ever had a chance to prove the sincerity of a man---you
have it now.

"But—Whatever You Do—Do Now—Or—Be Too Late!!

"And—also remember—if I fail to make you a profit—I
absolutely warrant to you that—I Will Re-Place You—
Without Further Cost—in my next operation!!

"You have only a limited time to take advantage of this
offer.

"There were only a small number of units to start with
—and the rapid way in which these are being taken points
to one outstanding fact: The Late-Comer Will Be Left Out.

"Make out your order now—for as many Units as you
desire.

"Others are taking them fast—many are ordering ten
units—some only one unit—but—the orders are coming in
so fast that I am assured the small number first offered will
soon be gone.

"Take one—two—or—Five Units—or up to Twenty—
but—you must—Do It Without Delay!!

"Remember the price is \$10 per unit.

"If you Must have time payments—send \$5 down per
unit—and the other \$5 in 15 days.

[fol. 24] "A Ten-Dollar Bill may make you Hundreds—!!

"It may make you a Thousand Dollars—or more!!

"but it won't make you one red cent if you are not 'in'.

"therefore—let your o-der be filled in Now—

"With the distinct understanding that—My Word Is My
Bond—and—after you have purchased—if you come down
and go over the area—and find any misrepresentation—I
will refund your money—and refund your transportation.

"But—Without Doubt And Without Fail * * * You
Must Come In Now—Or Forever Be Left Out!!

"Use the quickest method you can get to return your
order to me.

Yours—for the Profits You have been seeking,

Sincerely, (Signed) H. R. Edwards."

That said defendants wholly omitted to state to said Willard W. Penry in said letter or by any other means that between the lease referred to in said letter as the Indian Chief, and the Duncan Field referred to in said letter as being about three miles south of the Indian Chief lease, a test well for oil and gas had been drilled by Meridian Gas Company to a depth of about 3001 feet, and on or about August 27, 1929, had been abandoned as a dry hole, such fact being well known to said defendants and each of them at all times herein mentioned, as such fact being material in order to make the statements made by said defendants, in the light of the circumstances under which they were made, not misleading;

That said defendants wholly omitted to state to said Willard W. Penry in said letter, or by any other means, that between the lease referred to in said letter as the Indian Chief, and the Angle & Brogan Gas Field referred to in said letter as being less than three miles southeast of said Indian Chief Lease, a test well for oil and gas had been drilled by Morgan et al. to a depth of about 2579 feet and on or about February 27, 1935, has been abandoned as a dry hole, such fact being well known to said defendants and each of them at all times herein mentioned, and such fact being material in [fol. 25] order to make the statements made by the said defendants in the light of the circumstances under which they were made, not misleading;

That said defendants wholly omitted to state to said Willard W. Penry in said letter or by any other means that between the lease referred to in said letter as the Indian Chief, and the School land Pool referred to in said letter as directly offsetting on the west said Indian Chief Lease, a test well for oil and gas had been drilled by Malneree et al. to a depth of about 2530 feet and during the year 1926 had been abandoned as a dry hole, such fact being well known to said defendants and each of them at all times herein mentioned, and such fact being material in order to make the statements made by the said defendants, in the light of the circumstances under which they were made, not misleading;

That said defendants wholly omitted to state to said Willard W. Penry, in said letter or by any other means, that between the lease referred to in said letter as the Indian Chief, and the 7,000 foot test well referred to in said letter as being drilled less than one and one-half miles northeast of said Indian Chief Lease, a test well for oil and gas had

been drilled by Smythe et al. to a depth of about 3123 feet and on or about May 13, 1930, had been abandoned as a dry hole, such fact being well known to said defendants and each of them at all times herein mentioned, and such fact being material in order to make the statements made by said defendants, in the light of the circumstances under which they were made, not misleading;

That said defendants wholly omitted to state to said Willard W. Penry in said letter or by any other means, that between the lease referred to in said letter as Indian Chief, and the Flowers Pool referred to in said letter as being a little more than one mile west of said Indian Chief Lease, a test well for oil and gas had been drilled by Magnolia Petroleum Company to a depth of about 4555 feet and during the year 1925 had been abandoned as a dry hole, such fact being well known to said defendants and each of them at all times herein mentioned, and such fact being material in order to make the statements made by said defendants, in the light of the circumstances under which they were made, not misleading;

That said defendants wholly omitted to state to said Willard W. Penry in said letter or by any other means, that near [fol. 26] the north boundary line of the lease referred to in said letter as Indian Chief, and between the Johnson Pool referred to in said letter, and the location of the well to be drilled on said Indian Chief Lease, a test well for oil and gas had been drilled by Drake et al. to a depth of about 2700 feet and during the year 1923 had been abandoned as a dry hole, such fact being well known to said defendants and each of them at all times herein mentioned, and such fact being material in order to make the statements made by such defendants, in the light of the circumstances under which they were made, not misleading;

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That said defendants on or about the 25th day of October, 1936, in the City of Frederick, in the State of Oklahoma, in the Western District of Oklahoma, and within the jurisdiction of this Court, unlawfully, wilfully and feloniously, in the sale of a security, to-wit, three units in Edwards Indian Chief Trust, by use of the United States mails, did obtain money, to-wit: \$30.00 from said Willard W. Penry by means of the aforesaid omissions to state the material facts

hereinbefore set forth which were necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, said use of the United States mails in the sale of said securities being in the following manner, to-wit:

That on or about the 9th day of October, 1936, said defendants did place and cause to be placed in the post office establishment of the United States of America, at Frederick, Oklahoma, a certain letter enclosed in an envelope bearing the necessary postage, to be sent and delivered by the post office establishment of the United States of America to said Willard W. Penry at LaJolla, California, said letter being substantially of the tenor hereinbefore in this count of this indictment set forth.

All of which acts of the said defendants, and each of them, were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided (Section 17(a) (2) of the Securities Act of 1933, as amended; Section 77q(a). (2), Title 15, U. S. C. A.)

[fol. 27]

Count Four

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That said defendants named in the first count of this indictment having organized, controlled and created the various business trusts described in paragraphs numbered 2, 3, 4, 5 and 6 of the first count of this indictment, the allegations of said paragraphs 2, 3, 4, 5, and 6 of the first count of this indictment are hereby incorporated in this count by reference to said paragraphs of said first count as fully as if here repeated, and on or about the 18th day of March, 1937, at Frederick, Oklahoma, in the Western District of Oklahoma, and within the jurisdiction of this court, there not then being in effect a registration statement filed with the Securities and Exchange Commission under the provisions of Section 5(a) of the Securities Act of 1933, as amended, (Section 77c, Title 15, U. S. C. A.) as to a certain Security, to-wit: certificates or beneficial interest in Indian Chief Protection Lease Trust, said certificates of beneficial interest being of the class and character of securities defined in Section 2 of said Act, and having wholly failed to file such registration statement with

respect to said security, unlawfully, wilfully and feloniously did use the United States mails to sell said security in violation of Section 5(a) (1) of the Securities Act of 1933, as amended, (Section 77c(a) (1), Title 15, U. S. C. A.) in the following manner, to-wit:

Said defendants on or about said 18th day of March, 1937, did place and cause to be placed in the Post Office of the United States of America, at Frederick, Oklahoma, a certain three page letter enclosed in an envelope with the necessary postage prepaid thereon, addressed to W. E. Mitchell at Merton, Wisconsin, to be sent and delivered by the Post Office establishment of the United States of America, said letter commencing with substantially the following words, to-wit:

“Report On ‘Indian Chief’

“Dear Mr. Mitchell:

“We are ready to drill the plug on ‘Indian Chief’—By this time next week, ‘Indian Chief’ should be in.”

and said letter closing with substantially the following words, to-wit:

[fol. 28] “I will probably be at the well day and night now, until it is completed—But my bookkeeper has instructions to hold your reservation for you until your reply is received—He will, also, forward your present unit certificate in the next few days—I will be expecting your answer by return mail—I again tell you I am confident of a big well and assure you I will flash you the good news the minute it happens, I remain, your friend and partner.

Sincerely, (Signed) H. R. Edwards.”

All of which acts of said defendants, and each of them, were against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided.

Count Five

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That said defendants named in the first count of this indictment having organized, controlled and created the various business trusts described in paragraphs numbered 2, 3,

4, 5 and 6 of the first count of this indictment, the allegations of said paragraphs 2, 3, 4, 5 and 6 of the first count of this indictment are hereby incorporated in this count by reference to said paragraphs of said first count as fully as if here repeated and on or about the 31st day of March, 1937, at Frederick, Oklahoma, in the Western District of Oklahoma, and within the jurisdiction of this court, there not then being in effect a registration statement filed with the Securities and Exchange Commission under the provisions of Section 5(a) of the Securities Act of 1933, as amended, (Section 77e, Title 15, U. S. C. A.) as to a certain security, to-wit: certificates of beneficial interest in Indian Chief Protection Lease Trust, said certificates of beneficial interest being of the class and character of securities defined in Section 2 of said Act, and having wholly failed to file such registration statement with respect to said security, unlawfully, knowingly, wilfully and feloniously did carry and cause to be carried through the United States mails said security for the purpose of delivery after sale in violation of Section 5(a) (2) of the Securities Act of 1933, as amended, (Section 77e(a) (2), Title 15, U. S. C. A.) in the following manner, to-wit:

[fol. 29] Said defendants on or about said 31st day of March, 1937, did place and cause to be placed in the Post Office of the United States of America, at Frederick, Oklahoma, a certain written certificate evidencing one unit in said Indian Chief Protection Lease Trust, said certificate, together with a letter of transmittal, being enclosed in an envelope with the necessary postage prepaid thereon, addressed to Frederick D. M. Soules at Wheeling, West Virginia, to be carried and delivered by the Post Office establishment of the United States of America to said Frederick D. M. Soules at Wheeling, West Virginia, and said envelope, together with the contents thereof; was thereupon carried and delivered by said Post Office Establishment of the United States of America according to the directions thereon to said Frederick D. M. Soules at Wheeling, West Virginia.

All of which acts of said defendants, and each of them, were against the peace and dignity of the United States of America and contrary to the form of the statutes in such case made and provided.

Count Six

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That the defendants named in the first count of this indictment, on or about the 1st day of May, 1936, devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property from the persons to be defrauded by means of the false and fraudulent pretenses, representations and promises in the first count of this indictment mentioned and described, and to defraud said persons to be defrauded of their money and property by the means and in the manner set forth in the first count of this money and property by the means and in the manner set forth in the first count of this indictment, the allegations of said first count, descriptive of said scheme and artifice, including the allegations of intent and knowledge, on the part of said defendants and each of them, being by reference hereby incorporated in this count of this indictment, as if set forth and repeated, and for the purpose and with the intent on the part of said defendants, and each of them, of executing said scheme and artifice to defraud, and for obtaining money and property, and attempting so to do, unlawfully, feloniously, fraudulently and knowingly did [fol. 30] deposit and cause to be deposited on or about the 23rd day of October, 1936, in the Post Office of the United States of America at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, a certain two-page letter, commencing with substantially the following words, to-wit:

"Edwards Petroleum Company

Frederick, Oklahoma

October 23, 1936.

Last-Minute News for 'Lucky Indian' Unit Holders

"Miss Jessie Bell DeLaMater, Cedar Rapids, Iowa.

"DEAR MISS DELAMATER:

"I am bringing you a report on 'Lucky Indian' that will give you real joy and satisfaction, for I have just returned from the well, and we are now carefully reaming out, getting ready to set casing, and make the final test, which I sincerely

believe is going to prove up this property for such commercial production as to make a quick sale possible, and some good profits in your hands right away soon."

and said letter closing with substantially the following words, to-wit:

"I want to thank you for your patience and the way you have upheld me by your fine letters, and assure you that I'm going to do my best to merit all you have said, by making a Pay-Off At 'Lucky Indian' the goal.

Your sincere friend, (Signed) H. R. Edwards.

"P. S. Use the application for every interest you can handle in the inclosed letter, this may be your last chance—the units are nearly all gone."

Said letter being enclosed in an envelope with the necessary postage prepaid thereon, addressed to Miss Jessie B. DeLaMater at Cedar Rapids, Iowa, said envelope being substantially of the following tenor, to-wit:

[fol. 31]

"(Cancelled stamp).

"Miss Jessie B. DaLaMater
% City Hall
Cedar Rapids, Iowa."

All of which acts of said defendants and each of them were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Seven

"And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That the defendants named in the first count of this indictment, on or about the 1st day of May, 1936, devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property from the persons to be defrauded, by means of the false and fraudulent pretenses, representations and promises in the first count of this indictment mentioned and described, and to defraud said persons to be defrauded of their money and property by the means and in the manner set forth in the first count of this indictment, the allegations of said first count, descriptive

of said scheme and artifice, including the allegations of intent and knowledge on the part of said defendants and each of them, being by reference hereby incorporated in this count of this indictment, as if set forth and repeated, and for the purpose and with the intent on the part of said defendants, and each of them, of executing said scheme and artifice to defraud, and for obtaining money and property, and attempting so to do, unlawfully, feloniously, fraudulently and knowingly did deposit and cause to be deposited on or about the 30th day of January, 1937, in the Post Office of the United States of America at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, a certain seven-page letter, commencing with substantially the following words, to-wit:

"Edwards Petroleum Company

Frederick, Oklahoma

January 30, 1937.

"Mr. Holley B. Osmun, Phillipsburg, N. J.

"DEAR MR. OSMUN:

"At long last—here is the good news—We Are Through [Vol. 32] With Our 'Fishing Job'—We Have Passed By The Obstruction In 'Indian Chief'—Casing Is Being Ordered—It Will Be Set At Once—and—We Are Ready—To Bring In Our Well!!"

and said letter closing with substantially the following words, to-wit:

"I am depending on you—as you depend on me.

Your sincere friend and 'partner', (Signed) H. R. Edwards.

"P. S. Our shallow well will be started in the next few days. That means another Big Extra Profit Possibility. I will skid the present derrick over and drill with the present crew, who know the formations, I decided that was the wisest thing to do, as the boys who encountered these shallow sands should be the ones to drill the shallow well—so as to avoid more trouble. That is wise—don't you think?

H. R. E."

Said letter being enclosed in an envelope with the necessary postage prepaid thereon, addressed to Mr. Holley B. Osmun at Phillipsburg, New Jersey, said envelope being substantially of the following tenor, to-wit:

“(Cancelled Stamp).

“Mr. Hooley B. Osmun,
648 Belvidere Ave.,
Phillipsburg, N. J.”

All of which acts of said defendants and each of them were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Eight

And Your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That the defendants named in the first count of this indictment, on or about the 1st day of May, 1936, devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property from the persons to be defrauded, by means of the false and fraudulent pretenses, [fol. 33] representations and promises in the first count of this indictment mentioned and described, and to defraud said persons to be defrauded of their money and property by the means and in the manner set forth in the first count of this indictment, the allegations of said first count, descriptive of said scheme and artifice, including the allegations of intent and knowledge on the part of said defendants and each of them, being by reference hereby incorporated in this count of this indictment, as if set forth and repeated, and for the purpose and with the intent on the part of said defendants, and each of them of executing said scheme and artifice to defraud, and for obtaining money and property, and attempting so to do, unlawfully, feloniously, fraudulently and knowingly did deposit and cause to be deposited on or about the 6th day of February, 1937, in the Post Office of the United States of America, at Fredrick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, a certain three-page letter, commencing with substantially the following words, to-wit:

“Edwards Petroleum Company,
Frederick, Oklahoma

February 6, 1937.

“DEAR FRIEND AND ASSOCIATE:

“Casing will arrive at the lease tomorrow—the crew will begin to immediately ‘run’ this in the hole—then, as soon as it is cemented in place, We Will Bring ‘Indian Chief’ In—for what appears to me to be certain production, that should, immediately make possible the high value on our property that we have anticipated.”

and said letter closing with substantially the following words, to-wit:

“I am depending on you. Don’t fail me.

“Use this Order Blank enclosed. . . Now!!!!

Your friend and ‘partner’, (Signed) H. R. Edwards.”

Said letter being enclosed in an envelope with the necessary postage prepaid thereon, addressed to Mr. E. H. McKibben at Wadsworth, Nevada; said envelope being substantially of the following tenor, to-wit:

[fol. 34]

“(Cancelled Stamp)

“Mr. E. H. McKibben,
Wadsworth, Nevada.”

All of which acts of said defendants and each of them were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Nine

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That the defendants named in the first count of this indictment, on or about the 1st day of May, 1936, devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property from the persons to be defrauded, by means of the false and fraudulent pretenses, representations and promises in the first count of this indictment mentioned and described and to defraud said persons to be defrauded of their money and property by the means and in the manner set forth in the first count of this indictment, the allegations of said first count, descriptive of said scheme and artifice, including the allegations of intent

and knowledge on the part of said defendants and each of them, being by reference hereby incorporated in this count of this indictment, as if set forth and repeated, and for the purpose and with the intent on the part of said defendants, and each of them, of executing said scheme and artifice to defraud, and for obtaining money and property, and attempting so to do, unlawfully, feloniously, fraudulently and knowingly did deposit and cause to be deposited on or about the 23rd day of January, 1937, in the Post Office of the United States of America at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, a certain two-page letter, commencing with substantially the following words, to-wit:

"Edwards Petroleum Company,

Frederick, Oklahoma

January 23, 1937.

"DEAR FRIEND AND ASSOCIATE:

"'Lucky Indian' has finally been completed as a nice producer and is a flowing well—I know you are anxious to receive this good news. It gives me great pleasure to [fol. 35] report that this operation has finally been crowned with success after so long a time."

and said letter closing with substantially the following words, to-wit:

"This new well is being started immediately. I believe twenty to thirty days should see both our wells completed as big producers and put us in a position to demand a very fancy price for 'Lucky Indian' when we sell—I will keep you posted and again extend my congratulations to you on the winning we have on 'Lucky Indian'. Will appreciate hearing from you often.

Very truly yours, (Signed) H. R. Edwards."

Said letter being enclosed in an envelope with the necessary postage prepaid thereon, addressed to Mr. Cash S. Clayton at Tampa, Florida, said envelope being substantially of the following tenor, to-wit:

"(Cancelled Stamp)

"Mr. Cash S. Clayton,
General Delivery
Tampa, Fla."

All of which acts of said defendants and each of them were contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Count Ten

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That the defendants named in the first count of this indictment, on or about the 1st day of May, 1936, devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property from the persons to be defrauded, by means of the false and fraudulent pretenses, representations and promises in the first count of this indictment mentioned and described, and to defraud said persons to be defrauded of their money and property by the means and in the manner set forth in the first count of this indictment, the allegations of said first count, descriptive of said scheme and artifice, including the allegations of intent and [fol. 36] knowledge on the part of said defendants and each of them, being by reference hereby incorporated in this count of this indictment, as if set forth and repeated, and for the purpose and with the intent on the part of said defendants, and each of them, of executing said scheme and artifice to defraud, and for obtaining money and property, and attempting so to do, unlawfully, feloniously, fraudulently and knowingly did deposit and cause to be deposited on or about the 4th day of November, 1936, in the Post Office of the United States of America at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, a certain four-page letter, commencing with substantially the following words, to-wit:

“Edwards Petroleum Company,
Frederick, Oklahoma

November 4, 1936.

“Mr. J. B. Felty, Alcona, Pa.

“DEAR MR. FELTY:

“I am bringing you the greatest of great news:

“The 7000-foot Test Adjoining ‘Indian Chief’ Has Hit!!”

and said letter closing with substantially the following words, to-wit:

"I am giving you an 'even break' with myself—the same chance for a Final Cleaning that I have.

"Without fail—take advantage of it.

Your friend, (Signed) H. R. Edwards."

Said letter being enclosed in an envelope with the necessary postage prepaid thereon, addressed to Mr. J. B. Felty at Altoona, Pennsylvania, said envelope being substantially of the following tenor, to-wit:

"(Cancelled Stamp)

"Mr. J. B. Felty,
Altoona, Pa."

All of which acts of said defendants and each of them were contrary to the form of the statute in such case made and [fol. 37] provided and against the peace and dignity of the United States of America.

Count Eleven

And your Grand Jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

That the defendants, Hiram R. Edwards and R. B. Binger, whose more full, true and correct names are to the Grand Jurors unknown, within three years last past, in the City of Frederick, Oklahoma, in the Western District of Oklahoma, and within the jurisdiction of this Court, did unlawfully, wilfully, feloniously, knowingly and fraudulently, combine, conspire, confederate and agree together, and with each other, and with divers other persons, whose names are to your Grand Jurors unknown, to commit divers and sundry offenses against the United States of America, to-wit: to unlawfully, feloniously, knowingly, fraudulently and willfully violate the provisions of Section 17(a) of the Securities Act of 1933, as amended, (Section 77q of Title 15, U. S. C. A.) by employing a device, scheme, and artifice to defraud in the sale of securities, to-wit: certificates of beneficial interest in H. R. Edwards Comanche County, Oklahoma, Trust, Edwards Indian Chief Trust, Indian Chief Additional Development Trust, Indian Chief Protection Lease Trust, and Edwards Combined Trust, which sales of securities would be made in interstate commerce and by use of the United States mails; and to unlawfully, feloniously, knowingly, fraudulently and wilfully violate the provisions of Section

5(a) of the Securities Act of 1933, as amended, (Section 77(e) of Title 15, U. S. C. A.) by *by* selling said securities by use of the United States mails without having in effect a registration statement, filed with the Securities and Exchange Commission under the provisions of said Section; and to unlawfully, feloniously, knowingly, fraudulently and wilfully violate the provisions of Section 215 of the Penal Code of the United States (Section 338, Title 18, U. S. C. A.) by making use of the United States Mails in furtherance of a scheme and artifice to defraud, after having devised and intended to devise such scheme and artifice to defraud; that said unlawful conspiracy, combination, confederation and agreement was continuously in existence and in the process of execution by said defendants and divers others persons to your Grand Jurors unknown, throughout all of the time from on or about the 1st day of May, 1936, up [fol. 38] to and including the day of the returning of this indictment, and on each and every day intervening; and said defendants did then and there have it understood and agreed together, and with each other and with divers other persons to your Grand Jurors unknown, that said unlawful conspiracy, combination, confederation and agreement was to be executed, carried out, and continued in existence in substantially the following manner, to-wit:

Said defendants were to organize, control and create the business trusts described in paragraphs numbered 2, 3, 4, 5 and 6 of the first count of this indictment, the allegations of which paragraphs of said count are hereby incorporated in this count by reference to said paragraphs as fully as if here repeated; said defendants were to prepare and cause to be prepared, letters, pamphlets, and circulars, addressed to the persons to be defrauded, in which letters, pamphlets and circulars the false and fraudulent representations and statements set forth in the first count of this indictment were to be made and repeated, the allegations of said first count descriptive of said representations and statements, the falsity thereof, and the true facts in regard to the matters and things concerning which said representations and statements were made, are by reference to said first count hereby incorporated in this count of this indictment, as if here set forth and repeated; said defendants were to place and cause to be placed postage stamps on the envelopes in which said letters, pamphlets and circulars were enclosed, and were to

mail and cause to be mailed said letters in the United States Post Office at Frederick, Oklahoma, to be carried and delivered by the Post Office establishment of the United States of America to the persons to be defrauded; that the defendants, by means of the false and fraudulent representations and statements contained in said letters, were to endeavor to induce the persons to be defrauded to purchase the securities to be issued by the defendants would not file with the Securities and Exchange Commission any registration statement under the provisions of Section 5a of the Securities Act of 1933, as amended, but nevertheless would sell said securities by use of the United States mails and would deliver said securities after sale by use of the United States mails.

That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and in order to carry it [fol. 39] into effect, and in order to effect the object thereof, the defendants and other persons to your Grand Jurors unknown, committed the following and other overt acts, to-wit:

Overt Acts

(1) On or about the 11th day of September, 1936, the defendant, Hiram R. Edwards, at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, executed a Declaration of Trust of Edwards Indian Chief Trust, in which he was designated as sole trustee and as such was vested with title to an undivided one-half interest in certain oil and gas leases, covering lands situated in Stephens County, Oklahoma.

(2) On or about the 25th day of November, 1936, the defendant, Hiram R. Edwards, at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, executed a Declaration of Trust of Indian Chief Additional Development Trust, in which he was designated as sole trustee and as such was vested with title to an undivided one-half interest in certain oil and gas leases, covering lands situated in Stephens County, Oklahoma.

(3) On or about the 24th day of March, 1937, the defendant, R. B. Binger, at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, signed a letter addressed to Cash S. Clayton at Tampa, Florida, in which letter it was stated that a cer-

tificate of beneficial interest in Indian Chief Protection Lease Trust would be sent to said Cash S. Clayton as soon as the same was signed by the defendant, Hiram R. Edwards.

(4) On or about the 12th day of October, 1936, the defendant, R. B. Binger, at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, signed a letter addressed to Miss Jessie Belle DeLaMater at Cedar Rapids, Iowa, in which it was stated that certificates of beneficial interest in "Lucky Indian" would be forwarded at an early date.

(5) On or about the 21st day of December, 1936, the defendant, Hiram R. Edwards, at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, did endorse a certain \$30.00 check dated December 19, 1936, signed by Willard W. Penry and drawn on the San Diego Trust and Savings Bank of San Diego, California.

[fol. 40] (6) On or about the 9th day of January, 1937, the defendant, Hiram R. Edwards, at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, did sign a letter addressed to Dr. Harper L. Proctor at Jacksonville, Florida, in which it was stated that a certificate of beneficial interest in "Indian Chief" would be forwarded to said Dr. Proctor during the following week.

(7) On or about the 10th day of October, 1936, the defendant, R. B. Binger, at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, signed a certain letter addressed to Dr. Harper L. Proctor at Jacksonville, Florida, in which it was stated that certificates covering units in "Lucky Indian" would be forwarded to said Dr. Proctor at an early date.

(8) On or about the 8th day of June, 1937, the defendant, Hiram R. Edwards, at Frederick, Oklahoma, in the Western District of Oklahoma and within the jurisdiction of this Court, did sign a Trustee Certificate of Edwards Combined Trust stating that Dr. Harper L. Proctor was the owner of three units in said Trust.

(9) On or about the 24th day of March, 1937, the defendant, Hiram R. Edwards, at Frederick, Oklahoma, in the

Western District of Oklahoma and within the jurisdiction of this Court, did sign a certain Trustee Certificate of Indian Chief Additional Development Trust, reciting that Willard W. Penry was the owner of six units in said Trust.

That said unlawful conspiracy, combination, confederation and agreement and the acts of the defendants in pursuance thereof, were and are contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Section 88, Title 18, U. S. C. A.)

John Brett, Assistant United States Attorney.

Endorsed: No. 12682. United States District Court, Western District of Oklahoma. The United States of America vs. Hiram R. Edwards and R. B. Binger. Indictment Violation Section 77e and q, Title 15, U. S. C. A., Section 338, Title 18, U. S. C. A. Section 88, Title 18, U. S. C. A. A true bill. Ernest W. Clarke, Foreman. Filed in [fol. 41] open court this 15th day of Nov., A. D. 1938. Theodore M. Filson, Clerk. Bail \$5000 & \$1000.

IN UNITED STATES DISTRICT COURT

DEMURRER TO INDICTMENT—Filed December 16, 1938

Comes Now Hiram R. Edwards, one of the defendants in the above entitled and numbered cause, and demurs to the indictment herein for the following reasons to-wit:

I

That said indictment wholly fails to charge said defendant with a violation of any valid law or statute under the Constitution of the United States of America.

II

That said indictment is not signed by the foreman of the Grand Jury for the Western District of Oklahoma purporting to have returned said purported indictment.

III

That said indictment and each and every count thereof, except the Eleventh count, is fatally defective for duplicity,

in that the same alleges and sets forth in each of the first ten counts thereof divers and sundry different organizations, companies, trusts and schemes wholly disassociated from each other.

IV

That said indictment, and each count thereof, except count Eleven thereof, is fatally defective for the reason that the allegations contained in the first count of said indictment pertaining to the representations and statements made and to be made by the defendants are not properly negatived, said allegations being incorporated by reference in the other counts of said indictment.

V

That Count 3 of the indictment, which attempts to allege a violation of Section 17 (a) (2) of the Securities Act of 1933 i. e., the sale of Securities by the use of the mails by means of omissions to state material facts necessary to be stated to make the statements made, in the light of the circumstances under which they were made, not misleading; [fol. 42] is defective and the same should be quashed for the reason that the same is made up entirely of conclusions of the pleader and the defendant is not apprised of any fact or facts upon which to base his defense with respect to the allegations to the effect that various omissions were made of material facts, said count of the indictment wholly failing to state wherein the omissions complained of were material and what the circumstances were under which such omissions were made.

VI

That Counts 4 and 5 of the indictment are defective and fail to state a cause of action or charge of a violation of any laws of the United States of America. In this connection said counts attempt to charge a violation of Section 5 (a) (1) of the Securities Act of 1933, in substance to the effect that said defendants used the United States mail in the sale of certain securities without having in effect a registration statement filed with the Securities and Exchange Commission, neither of said counts alleging that the securities so sold by said defendants were not in the class of Securities exempted from registration under Section 3 of the

Securities Act of 1933 and the Rules and Regulations of the Securities and Exchange Commission exempting various classes of securities as provided for by Section 3 (b) of said Securities Act of 1933.

VII

That Counts 6, 7, 8, 9 and 10 of the indictment wholly fail to state a cause of action or charge of a violation of any valid and existing statute of the United States by or against said defendant, said counts attempting to charge a violation of Section 338, Title 18, United States Code.

VIII

That Count 11 of said indictment, to-wit: a charge of conspiracy, fails to properly state a cause of action against or charge of a violation of law by this defendant, and is defective in that said count charges the defendants with a conspiracy to violate the Securities Act of 1933 "by selling said securities by use of the United States mails without having in effect a registration statement, filed with the Securities and Exchange Commission", said count wholly failing to charge that the securities so sold were not of the class of securities exempted from registration under Section 3 of the Securities Act of 1933 and the Rules and Regulations of the Securities and Exchange Commission promulgated under said Act exempting divers and sundry other classes of securities from registration.

Wherefore, said defendant, Hiram R. Edwards, respectfully prays the Court that this demurrer to said indictment be sustained as to each and every count thereof and that the same be quashed, and in all things held for naught.

Murphy & McCutcheon, Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PLEA IN BAR AND APPLICATION FOR PRODUCTION OF TRANSCRIPT
OF EVIDENCE—Filed December 16, 1938

Comes Now, Hiram R. Edwards, one of the defendants in the above entitled and numbered cause, and files this his

plea in bar to the indictment and prosecution herein and makes application to the Court for an order directing and compelling the United States of America, its United States Attorney for this District, and the Securities and Exchange Commission to produce into Court and submit a copy thereof to said defendant, a transcript of certain evidence taken and adduced from said defendant by said Securities and Exchange Commission, and its officers, as more fully hereinafter set forth and enumerated.

For reasons therefor and in connection therewith said defendant would respectfully show unto the Court that on or about the 14th day of April, 1938, and on two successive times, the exact dates being unknown to said defendant, pursuant to certain subpoenas duces tecum served on him by the Securities and Exchange Commission, he appeared before an officer of said Commission at Fort Worth, Texas, and at Oklahoma City, Oklahoma, with the books and records called for in said subpoenas duces tecum and then and there, after having claimed his immunity against self incrimination, as provided by law and the Constitution of the United States, under compulsion, testified under oath, pursuant to various questions propounded and asked him by said officer of said Commission, said testimony concerning said defendant's identity and relationship to various trusts and organizations which are the subject matter of this prosecution and concerning divers and sundry other matters pertaining to the matters which are the subject of this [fol. 44] prosecution, and particularly to the personal entries, books and records of said defendant, which are a part of the subject matter of this prosecution.

That thereafter, as said defendant verily believes, and as he has been informed by the Securities and Exchange Commission, the evidence adduced by said Commission in the course of its investigation, as aforesaid, was transmitted to the Attorney General of the United States of America for criminal prosecution and the indictment herein thereafter returned and that, as said defendant verily believes; and as he has been advised by the Securities and Exchange Commission, said Commission has refused and refuses to make available to said defendant said testimony given by him pursuant to said subpoenas which said hearings and which evidence said defendant verily believes, and has been advised by said Securities and Exchange Commission, may be used by the Government in the prosecution of this cause.

That said defendant at each of the times aforesaid, when appearing before said Securities and Exchange Commission and its officers pursuant to said subpoenas claimed his immunity against self incrimination as aforesaid, prior to his testifying, but was compelled to testify against himself and to give information and testimony under oath which it is believed the Government will use against him in the prosecution herein and by virtue of said defendant having so testified he is immune from prosecution herein, all as provided for by law, the Constitution of the United States, and particularly Section 22 (c) of the Securities Act of 1933, as amended.

That at the time of said hearings said defendant made demand upon said officers of said Commission for a copy of the transcript of said defendant's said testimony and then and there offered to pay the costs thereof, but said demand and request of said defendant was refused by said officers of said Commission and thereafter, on the 1st day of December, 1938, said defendant, by and through his counsel, again made demand on the Securities and Exchange Commission for a copy of said transcript of said testimony, which request and demand of said counsel was on the 8th day of December, 1938, refused by said Commission, by and through Robert E. Kline, Jr., Assistant General Counsel of said Commission, a true and correct copy of his letter being marked Exhibit "A", and attached hereto and made a part hereof.

[fol. 45] That it is necessary in the presentation to the Court of this plea in bar that said defendant have a copy of said transcript of said testimony given by him before said officers of said Commission, and all of the same, at each and every of said hearings and continuances thereof, and which copy said defendant has heretofore tendered and now tenders payment therefor and said defendant further says that it is necessary that this Court have before it in passing on said plea in bar a copy of the transcript of said testimony, which transcript of said testimony defendant respectfully asks the Court to order the United States of America, the United States Attorney for this District, and the Securities and Exchange Commission to produce and furnish this defendant a true, correct and complete copy of said transcript of said testimony in each and every of said hearings.

Wherefore, said defendant respectfully prays the Court that said transcript of said testimony be produced by said

Securities and Exchange Commission and forthwith submitted to said defendant and that he be heard on the merits of this plea in bar, and that by virtue of his having testified before said commission, under compulsion, pursuant to subpoena, after having claimed his privilege against self incrimination, that the prosecution herein be forever barred, and that the charges against said defendant herein be dismissed, and said defendant discharged.

Murphy & McCutcheon, Attorneys for Defendant.

[Verification omitted.]

EXHIBIT "A" TO PLEA IN BAR

"Securities and Exchange Commission

Washington, December 8, 1938.

Air Mail.

J. Forrest McCutcheon, Esq., Messrs. Murphy & McCutcheon, 780 First National Building, Oklahoma City, Oklahoma.

Re: H. R. Edwards—FW 306

DEAR SIR:

This will acknowledge receipt of your letter of December [fol. 46] 1 in which you ask to have furnished you a transcript of the testimony taken by this Commission in connection with its investigation.

Inasmuch as the evidence adduced by the Commission in the course of its investigation was transmitted to the Attorney General for criminal prosecution and an indictment has been returned, this Commission does not feel it proper to make available to the defendant the testimony taken from witnesses which may be used by the Government in the prosecution of its case. In view of this, the Commission must respectfully refuse to comply with your request. The United States Attorney concurs in this view.

Even if you were to attempt to serve a subpoena duces tecum on any official of the Commission to produce such testimony, the Commission would be obliged to instruct such official to assert his privilege of refusing to produce evidence obtained in the course of an investigation by a duly authorized branch of the Government which, under the

authority of the Statute, has been turned over to the Attorney General for use in the prosecution of a criminal case. In my opinion the Court would no more compel its production than it would the production of testimony adduced by any other duly authorized investigating body and is as exempt from production for the benefit of a defendant as would be the evidence taken before a grand jury.

Very truly yours, for Chester T. Lane, General Counsel: Robert E. Kline, Jr., Assistant General Counsel.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION TO STRIKE PLEA IN BAR AND OBJECTION TO PRODUCTION OF TRANSCRIPT OF EVIDENCE—Filed February 28, 1939

Comes now the Government, the United States of America, and makes this its motion to strike plea in bar of Hiram R. Edwards, and objects to production of transcript of evidence, and in its grounds therefor says:

I

That the plea in bar wholly fails to state or allege facts [fol. 47] constituting the compulsion complained of or any compulsion of any nature whatsoever.

II

That the plea in bar fails to allege what testimony was given by the defendant which tends to incriminate him.

III

That the plea in bar does not allege that the books and records, alleged to have been produced before the examiner, were in fact delivered to the examiner in response to the subpoena issued and served upon the defendant.

IV

That the defendant, Hiram R. Edwards, was never sworn at any time during the proceedings or hearings complained

of and at no time produced any books or records, and did not at any time testify under oath, and was never compelled to testify or give any information against himself or anyone else under oath or otherwise and that each of said hearings complained of was recessed shortly after the defendant interposed his plea of immunity.

In support of said motion the Government attaches hereto, marked Exhibit "A", an affidavit in opposition to the plea in bar and application for production of transcript of evidence made by C. W. Aston, who was present at each of said hearings complained of, and who under oath makes this statement concerning said hearings as set forth in the affidavit, which affidavit is made a part of this motion.

Wherefore, premises considered, the Government prays that the plea in bar be stricken, and held for naught.

Chas. E. Dierker, United States Attorney; John Brett, Assistant United States Attorney.

EXHIBIT "A" TO MOTION TO STRIKE

Opposing Affidavit to Plea in Bar and Application for Production of Transcript of Evidence

STATE OF TEXAS,

County of Tarrant, ss:

C. W. Aston, being duly sworn, deposes and says that he [fol. 48] is an attorney of the Securities and Exchange Commission, duly appointed according to law.

Affiant states that on or about April 18, 1938, the defendant Hiram R. Edwards, accompanied by his attorneys, J. Forrest McCutcheon of Oklahoma City, Oklahoma, and Arthur Heemann of Fort Worth, Texas, appeared before an officer of the Securities and Exchange Commission at its office situated at 103 United States Courthouse, Fort Worth, Texas, pursuant to certain subpoenas duces tecum theretofore served on Hiram R. Edwards by an officer of said Commission.

That pursuant to the aforesaid subpoenas duces tecum the defendant Hiram R. Edwards accompanied by his aforesaid attorneys appeared before an officer of said Commission at its office situated at 103 United States Court house, Fort Worth, Texas, on April 19, 1938.

That pursuant to the aforesaid subpoenas *duces tecum* the said defendant appeared on May 3, 1938, before an officer of the Securities and Exchange Commission at Oklahoma City, Oklahoma, in the Grand Jury Room of the United States Courthouse in said City accompanied by his attorney, J. Forrest McCutcheon.

That the three above mentioned occasions are the only times that the defendant Hiram R. Edwards appeared before an officer of the Securities and Exchange Commission pursuant to the aforesaid subpoenas *duces tecum* and that affiant participated in and was present throughout the proceedings on each of the three occasions mentioned.

That upon each occasion above referred to the defendant produced the books and records called for in the aforesaid subpoenas *duces tecum* and stated that he claimed his immunity against self-incrimination in tendering said books and records and in testifying at said proceedings.

Affiant states in this connection that the books and records produced by the defendant pursuant to the aforesaid subpoenas *duces tecum* were never received, accepted or examined on any of the three occasions mentioned above or at any other time by the Securities and Exchange Commission or any officer of said Commission.

Affiant further states that the defendant Hiram R. Edwards did not testify under oath and that said defendant [fol. 49] was never sworn or placed under oath by an officer of the said Commission or any one else on any of the three occasions above mentioned.

Affiant specifically states that the defendant Hiram R. Edwards was not compelled to testify or give any information against himself or anyone else under oath or otherwise and that the proceedings on each of the three occasions mentioned above were recessed shortly after the defendant interposed his plea of immunity.

C. W. Aston, Affiant.

Subscribed to before me this 25th day of February, 1939. Lois Newam, United States Commissioner, Northern District of Texas. (Seal.) A True copy: Lois Newam, United States Commissioner, Northern District of Texas.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION TO STRIKE OPPOSING AFFIDAVIT TO PLEA IN BAR—
Filed March 1, 1939

Comes now Hiram R. Edwards, one of the defendants in the above entitled and numbered cause, and would respectfully show unto the Court that he has heretofore filed herein his plea in bar to prosecution and that the United States of America, Plaintiff, has filed its motion to strike said plea in bar and has attached thereto an affidavit of C. W. Aston, an attorney of the Securities and Exchange Commission, which said defendant respectfully moves the Court that said affidavit should be stricken and held for naught for the reason that same is not a proper part of plaintiff's said motion to strike, the reception of same not affording this defendant the right of cross-examination of said affiant and said affidavit being wholly incompetent to establish the facts attempting to be established by the plaintiff herein.

J. Forrest McCutcheon, Attorney for Defendant,
Hiram R. Edwards.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING DEMURRER, ETC.—March 1, 1939

On this 1st day of March, 1939, parties appeared by their respective counsel, and the defendant Hiram R. Edwards asks and is granted leave to withdraw his plea of not guilty [fol. 50] and presents his demurrer to the indictment. It is ordered by the Court that said demurrer be overruled and exceptions allowed. It is further ordered that the plea in bar and application of the defendant Hiram R. Edwards for the production of the transcript of evidence be overruled and exceptions allowed. It is further ordered that the motion of the plaintiff to strike the plea in bar, the objections to the production of the transcript of evidence and the motion of the defendant Hiram R. Edwards to strike the opposing affidavit to the plea in bar be each overruled and exceptions allowed the respective parties. The defendant Hiram R. Edwards re-enters his plea of not guilty as charged in the indictment.

IN UNITED STATES DISTRICT COURT

ARRAIGNMENT OF HIRAM R. EDWARDS AND R. B. BINGER

On this 17th day of December, 1938, the defendants each appear by their attorney, are duly and legally arraigned upon the indictment herein, and each enters his plea of not-guilty as charged therein without prejudice to the right to plead to the indictment.

IN UNITED STATES DISTRICT COURT

PLEA OF NOLO CONTENDERE OF HIRAM R. EDWARDS

On this 25th day of October, 1939, the defendant appears in person and by counsel, and asks and is granted leave to withdraw his plea of not guilty, and enters plea of nolo contendere to each count of the indictment. Thereupon, it is ordered by the Court that finding of guilt and sentence of said defendant be continued to January 1, 1940; and said case is referred to the Probation Officer for investigation. It is further ordered that the defendant be permitted to stand on his present appearance bond.

IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT

On this 29th day of January, 1940, came the United States Attorney, and the defendant, Hiram R. Edwards appearing in proper person, and by J. Forrest McCutcheon and J. D. Lydick, his attorneys, and

The defendant having been convicted on his plea of nolo contendere to the offenses charged in the indictment in the above-entitled cause, to-wit: Using United States Mails in sale of certain securities with intent to defraud without hav-[fol. 51] ing in effect a registration statement, filed with the Securities and Exchange Commission; and Conspiracy in using the United States mails in furtherance of scheme to defraud; and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It is By The Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative for the period of three (3) years from date of delivery on each of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh counts of the indictment, or until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that sentences of confinement herein shall run concurrently.

It is further ordered that service of commitment herein be stayed to March 4, 1940, and the defendant is permitted to stand on his present appearance bond.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Edgar S. Vaught, Judge.

IN UNITED STATES DISTRICT COURT

ORDER OF DISMISSAL OF DEFENDANT R. B. BINGER

On this 29th day of January, 1940, on motion of the United States Attorney, it is ordered by the Court that said cause be dismissed as to the defendant R. B. Binger on his plea of nolo contendere to the indictment, and said defendant is discharged and his bond exonerated.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL UNDER RULE III—Filed February 3, 1940

Name and Address of Appellant: Hiram R. Edwards, 400 North Ewing Street, Dallas, Texas.

Name and Address of Appellant's Attorney: J. Forrest McCutcheon, 800 Perrine Building, Oklahoma City, Oklahoma.

[fol. 52] Offense: Violation of Securities Act of 1933; violation of Section 338, Title 18, United States Code; and Violation of Section 88, Title 18, United States Code.

Date of Judgment: January 29, 1940.

Brief Description of Judgment or Sentence: Three years in the United States Penitentiary at Leavenworth, Kansas, on each count, the same to run concurrently.

Name of Prison Where Now Confined, If Not on Bail: On bail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the judgment above mentioned on the grounds set forth below.

Hiram R. Edwards, Appellant. J. Forrest McCutcheon, Attorney for Appellant.

GROUND S OF APPEAL

I

That the Court erred in overruling the demurrer to the Indictment and as to each count thereof, for the reasons therein stated.

II

That the Court erred in overruling appellant's plea in bar to the prosecution and in refusing to compel the Government to produce a transcript of the proceedings before the Securities and Exchange Commission in which appellant testified under oath, pursuant to subpoena and under compulsion, for the reasons stated in appellant's said plea in bar and motion.

III

That the judgment of the Court is contrary to law.

J. Forrest McCutcheon, Attorney for Appellant.

[File endorsement omitted.]

[The statement of points relied on, filed in the District Court, is similar to the statement appearing at page 1, and therefore is not printed here.]

[fols. 53-54] [Bond on appeal in the sum of \$2,500, with appellant as principal and Albert Brown, et al. as sureties, approved by the District Judge, was filed on February 24, 1940.]

32
Clerk's certificate to foregoing transcript omitted in printing.

[fol. 55] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE TENTH CIRCUIT

ORDER OF SUBMISSION—June 19, 1940

This cause came on to be heard and was argued by counsel, J. Forrest McCutcheon, Esquire, appearing for appellant, Charles E. Dierker, Esquire, appearing for appellee.

On motion, affidavit of John Brett and official reports of proceedings before Securities and Exchange Commission in the matter of Edwards Petroleum Company et al., dated April 18, 1938, April 19, 1938, and May 3, 1938, were received and filed over objection of appellant.

Thereupon the cause was submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

AFFIDAVIT OF JOHN BRETT—Filed June 19, 1940

STATE OF OKLAHOMA,

Oklahoma County, ss.

John Brett, of lawful age, being first duly sworn upon oath, deposes and says that he is and was Assistant United States District Attorney on March 1, 1939, on which said date there came on for hearing before Honorable Edgar S. Vaught, United States District Judge in and for the Western District of the State of Oklahoma, the defendant's plea in bar and application for production of transcript of evidence, the plaintiff's motion to strike the plea in bar, and the defendant's motion to strike the government's opposing affidavit to the plea in bar, in the above entitled case; that at the time said matters came on for hearing before Judge Vaught, affiant says that counsel for the government of the United States stated to the Court that they had the transcripts of the record in the proceedings which occurred in Fort Worth, Texas, on April 18, 1938, and April 19, 1938, and on May 3, 1938, at Oklahoma City, Oklahoma, and if the government's affidavit was not sufficient, the government would offer them in evidence if the Court desired to examine

them; that upon being so advised, His Honor, Judge Vaught, stated that he did not care to see the transcripts, that he [fol. 56] did not need them to pass upon the said plea in bar, and that he was going to overrule the defendant's plea in bar.

That the Government of the United States, in presenting the said case to His Honor, Judge Vaught, at the time of the plea of nolo contendere, did not use any of the transcripts of the purported testimony of the defendant, Hiram R. Edwards, or any statement of the defendant, taken at the times of said investigations, as hereinbefore set forth.

That the United States has not at any time in the preparation of this case or at any stage of the proceedings, including said three investigations hereinbefore set forth, ever had access to, much less the custody of, the books and records of the defendant, Hiram R. Edwards, kept by him personally or for and in connection with the operation of the said common law trusts herein involved.

Further affiant saith not.

John Brett, Affiant.

Subscribed and sworn to before me this 15th day of June, 1940. Erling W. Barker, Notary Public. My commission expires 7-14-40. (Seal.)

[File endorsement omitted.]

BEFORE THE SECURITIES AND EXCHANGE COMMISSION

In the Matter of EDWARDS PETROLEUM COMPANY, H. R. EDWARDS, Both Individually and as Trustee; Roger Binger, Lucky Indian Trust, Edwards Indian Chief Trust, Indian Chief Additional Development Trust, Indian Chief Production Lease Trust, and Edwards Combined Trust.

Federal Building, Room 103, Fort Worth, Texas.

Met, pursuant to notice of Commission.

Before C. W. Aston, Trial Examiner

Appearances:

C. W. Aston, Trial Examiner, Fort Worth, Texas, Appearing for the Commission. J. Forrest McCutcheon, First

National Building, Oklahoma City; Oklahoma, and Arthur Heeman, Fort Worth. National Bank Building, Fort Worth, Texas, Appearing for Respondent, H. R. Edwards.

[fol. 57]

PROCEEDINGS

The Examiner: Gentlemen, you are advised that this is a continuation of an investigation in the Matter of Edwards Petroleum Company, H. R. Edwards, both individually and as Trustee. Roger Binger, Lucky Indian Trust, Edwards Indian Chief Trust, Indian Chief Additional Development Trust, Indian Chief Production Lease Trust, and Edwards Combined Trust.

It is being conducted pursuant to orders of the Securities and Exchange Commission, dated May 29, 1936, and February 28, 1938.

I will state for the record that the proceedings this morning are being conducted in the office of the Securities and Exchange Commission, 103 United States Court House, Fort Worth, Texas.

For the information of the reporter this investigation is confidential, all stenographic notes in connection therewith must be submitted to the Examiner. The reporter is to make an original and three copies of the transcript, the original and two copies of the transcript are to be submitted to the Fort Worth office of the Securities and Exchange Commission; the fourth copy is to be submitted by the reporter to the contract reporter, Electreporter, Inc., Stoneleigh Court Building, 1706 L Street, N. W., Washington, D. C.

Without specific approval of the Commission, copies of the transcript may not be sold or made available to anyone other than the Commission.

* Q. (To Mr. H. R. Edwards, Respondent.) Mr. Edwards, you are appearing pursuant to a certain subpoena or subpoenas duces tecum served on you in the Black Hotel, Oklahoma City on April 12, 1938, are you not?

Mr. Forrest McCutcheon: As counsel, Mr. Edwards refuses to testify without being sworn.

Comes now H. R. Edwards, Respondent, in the above matter, and makes demand on the Securities and Exchange Commission for a copy of the transcript of this hearing, for which he tenders payment of the cost thereof.

Mr. Aston: Of course your tender is not anticipated to be made until the transcript has been set up and made in form. [fol. 58] I will state in answer to the statement made by Mr. McCutcheon that the reporter is instructed to not make available for sale or loan a copy of the transcript of this proceedings to Mr. Edwards, or to his counsel, unless approval is obtained first from the Securities and Exchange Commission. I will further state that, as Examiner, I am not authorized to grant the request of counsel for respondent as to making available a copy of the transcript of the proceedings in this matter.

Mr. McCutcheon: Note exception of Mr. Edwards, the Respondent here.

Mr. Aston: The questions to be propounded to you at this time, Mr. Edwards, will be strictly limited to an identification of the books and records produced and books and records called for in the subpoena duces tecum served upon you on April 12, 1938, in the Black Hotel, Oklahoma City. With that explanation, do you now solemnly swear that you will fully and truly, to the best of your ability, identify for this record any and all books and records which you have produced pursuant to such subpoenas and true explanation make of any failure on your part to produce such books and records or any part thereof and any failure on your part to fully comply with such subpoenas?

Mr. McCutcheon: Let the record show:

• Mr. Edwards, in answer to counsel's question, you have, pursuant to subpoenas duces tecum served on you in the Black Hotel in Oklahoma City, as Trustee, or asking you to bring books and records of the Lucky Indian Trust, Edward Indian Chief Trust, Indian Chief Additional Development Trust, Indian Chief Production Lease Trust and Edwards Combined Trust, you have brought to room 103 in the Federal Building at Fort Worth, Texas, at this time, and have here with you, all of the books and records asked for in said subpoenas duces tecum that you have available, have you?

A. Yes, sir.

Q. Mr. Edwards, then in answer to counsel's question, put before mine, in the identification of these books and records, and in any testimony that you give here at this hearing, and in the production of any and all such books, records and other documents which you have brought here, do you claim your privilege against self-incrimination, as provided for by

[191.59] the Securities Act of 1933, laws of the United States and Constitution of the United States?

Mr. Edwards: I certainly do.

Mr. Aston: I would like to clarify your statement, Mr. McCutcheon, for my own information as well as for the record.

I understand that you have instructed your client, Mr. Edwards, the Respondent, in this matter, to claim his constitutional rights?

Mr. McCutcheon: It was a question, I have not instructed him anything, and I asked him a question, and he did.

Mr. Aston: I am sorry, I misconstrued that. I did not understand; he does now claim his constitutional right as well as the privilege granted under the statute with respect to producing at this time the books and records specifically called for in subpoena duces tecum served upon him; I am limiting this to the production only of the books and records specifically described in the subpoenas, am I correct in that assumption?

Mr. McCutcheon: I believe the record will speak for itself as to what I asked him.

Now if I may, Mr. Aston:

Q. Mr. Edwards, in the books and records, documents and other papers that you have brought here this morning and that are here in this hearing, pursuant to the subpoenas heretofore referred to and served upon you, are there entries therein referring to your own personal business and which are so commingled and intermingled with the business of the various trusts, that an inspection and audit of these books and records would, on its face, show your own personal business?

A. Absolutely.

Mr. Aston:

Q. You mean by that your own personal affairs, apart and separate from the trust affairs?

A. I mean by that that my own personal business, particularly my bank accounts, are all run in together along with the books and records of the trust.

Mr. McCutcheon:

Q. You have had these books audited?

A. Yes.

Q. Now, is it possible for an auditor or examiner to go [fol. 60] through your books and records of the trusts that are in question here, without seeing right on its face your own personal individual records and accounts?

A. No, they could not, because they are all together.

Mr. Aston: Would it be possible to separate or segregate from the books and records of the trusts your own private records, records of your own personal transactions?

A. Well, yes, you would have to get an auditor and spend some time doing it.

Q. I am asking or speaking of the records you have here this morning, could you segregate from them or take out from any of those records only your own personal, records of your own personal business and affairs so that you could have separately the books and records of the trusts?

A. I could take them out, but like I say, it would take me some time to do it.

Q. The subpoenas do not call for the production of any private books nor records.

A. The notice for producing these books gave such a short time it was impossible to segregate them.

Mr. McCutcheon: To segregate your personal records wouldn't it require a deletion of the books and records, a tearing up of them and reconstructing a new set of books, is that right?

A. Yes, sir.

Mr. Aston: In other words, the records you have here are records of your trust affairs and your personal affairs and they are so intermingled that you could not segregate one from the other without setting a new set of books and records, is that right?

A. That is right; as far as the income from different trusts, that is separate.

Q. The record of the income of the various trusts is separate?

A. Yes, sir, separate, but the manner in which it was handled through the banks and the manner in which the different bills and obligations were paid is all run together with my personal business.

Mr. McCutcheon: Mr. Edwards, in the prosecution of your development campaign and the drilling of various [fol. 61] wells that are in question in these various trusts,

I will ask you whether you put in a lot of your own personal money?

A. I did.

Q. And do those personal matters, personal refunds to you reimbursements and payments, are they all commingled in these books, is that correct?

A. That is correct.

Mr. Aston: Mr. Edwards said a minute ago that he claimed his constitutional right and statutory right, and any other right he might have, in any testimony he might give in this case, you do not mean to say that the questions which you have just now been propounding to him and trying to clarify that up to this point, that he is claiming any constitutional right?

Mr. McCutcheon: He claims immunity from the time he claimed it, including every bit of testimony that he has now given and any that he shall hereafter give.

Mr. Edwards: That is right.

Mr. McCutcheon: You will have to claim your own immunity?

A. Yes, sir, I have already done that.

Mr. Aston: And to get the record straight and clarify matters to whosoever inspects this at any subsequent time or review this matter, the attorney for Respondent himself has been seeking to clarify these matters and answers thereto; and questions of the attorney for Respondent were not propounded by the Examiner and questions as propounded by the Examiner will be reflected in the record. I have this one question.

Q. Mr. Edwards, do you refuse now to produce the books and records which have been subpoenaed?

Mr. McCutcheon: I think Mr. Edwards should be advised of the law.

Mr. Aston: I thought you had already told him that.

Mr. McCutcheon: I think he should be advised on the statute with reference to that.

Mr. Aston: I assumed counsel had already done that.

Mr. McCutcheon: I had not even talked to him.

[fol. 62] Mr. Aston: For the benefit of the Respondent, I will state that it is the practice of the Commission, and I desire, Mr. Edwards, to call your attention to your constitutional and statutory rights, and in that connection advise you that you may refuse to answer any question or

questions which may be asked you during this proceeding, on the grounds that same may tend to incriminate you and subject you to penalty or forfeiture.

Mr. Edwards: I have my books and records here.

Mr. Aston: Do you understand that statement?

Mr. Edwards: Yes, sir.

Mr. Aston: Do you refuse to produce your books and records specifically called for in this subpoena, on the ground that same may tend to incriminate you, is that the basis of your objection or your refusal to produce them?

A. Yes. I refuse on the ground that if I do produce them I am going to stand on my constitutional rights and ask for immunity.

Mr. Aston: Before we go any further in this matter—Mr. McCutcheon, we have already elicited from Respondent an affirmative statement that he is going to stand on his constitutional rights in this matter, and I am going to refuse any further questions by counsel for Respondent to Respondent that would tend to put the Respondent in position to say that he has been ordered to testify or that he has testified yet, still claiming his constitutional rights.

Mr. McCutcheon: We will stand on the record.

Mr. Aston: For the purpose of the record I would like to clarify the point that subpoenas served on Mr. Edwards were returnable in the office of the Securities and Exchange Commission, 103 United States Court House, Fort Worth, Texas, at 10 o'clock A. M., April 14, 1938. Mr. McCutcheon, of Oklahoma City, attorney for Respondent, Edwards, calls the Examiner over long distance telephone from Oklahoma City on April 13th and requested that subpoenas be made returnable at some date subsequent to April 14th in order to give Edwards additional time to assemble the books and records, and also for the reason that Mr. McCutcheon was ill. It was agreed between the Examiner and Mr. McCutcheon that Edwards be permitted to appear pursuant to subpoenas on this day, April 18, 1938, in lieu of April 14, 1938; that is correct, is it not, Mr. McCutcheon?

Mr. McCutcheon: That is correct.

Mr. Aston: Gentlemen, I am going to recess this investigation until 10 o'clock tomorrow morning, April 19, 1938. We will stand at recess until tomorrow morning at 10 o'clock.

Mr. McCutcheon: The same subpoenas duces tecum heretofore served on Mr. Edwards are still in effect?

Mr. Aston: That is right.

Hearing recessed until 10 o'clock A. M., April 19, 1938.

Met Pursuant to Recess or Adjournment on April 18th

Before O. H. Allred, Trial Examiner

Appearances:

O. H. Allred, Trial Examiner, C. W. Aston, Fort Worth, Texas, Attorney for the Commission. R. F. Milwee, Jr., Fort Worth, Texas, Attorney for the Commission.

J. Forrest McCutcheon, First National Building, Oklahoma City, Oklahoma, and Arthur Heeman, Fort Worth National Bank Building, Fort Worth, Texas, Appearing for Respondent, H. R. Edwards.

Proceedings

Examiner Allred: Let the record show this is a continuation of a former investigation recessed on yesterday until 10 o'clock today, and being an investigation ordered by the Securities and Exchange Commission under date May 29, 1936, and supplemental order dated February 28, 1938.

Mr. Reporter, I would like for you to note that O. H. Allred is sitting as an Examiner in this matter this morning and that there are present as attorneys for the Commission, Mr. C. W. Aston, of Fort Worth, and Mr. R. F. Milwee, Jr., of Fort Worth, and that the appearances for the Respondent, H. R. Edwards, are Mr. J. Forrest McCutcheon, First National Building, Oklahoma City, and Mr. Arthur Heeman, Fort Worth National Bank Building, Fort Worth, Texas.

Are you ready to proceed, gentlemen?

Mr. Aston: Yes.

[fol. 64] The Examiner: Let the record show it is stipulated by and between counsel for the Securities and Exchange Commission and counsel for H. R. Edwards that orders for formal investigation in this matter were duly promulgated by the Securities and Exchange Commission under date of May 29, 1933, and supplemental order dated

February 28, 1938, and that said orders designate O. H. Allred and C. W. Aston and other individuals as officers of the Commission with authority to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

Is that satisfactory, gentlemen?

Mr. McCutcheon: The stipulation is agreed to.

Mr. Aston: It is agreeable with counsel for the Commission.

The Examiner: All right, let's proceed.

Mr. Aston: Did the record show the appearance of both of the attorneys for Respondent?

The Examiner: It does and also let it show that Mr. H. R. Edwards is present at this session of the investigation in person.

Mr. McCutcheon: Let the record further show that all of the books and records and documents that he produced at this hearing yesterday morning are in the anti-room ready to be produced, subject to his claim of immunity or other constitutional grounds that he might raise.

The Examiner: I take it that is satisfactory.

Mr. Aston: It was stated yesterday by Mr. Edwards in answer to questions propounded by his attorney, Mr. McCutcheon, the books and records of the trusts which were subpoenaed in the matter and which were produced at that time, and as stated by Mr. McCutcheon which was made available are in the anti-room at this time, that the books and records of those trusts contain certain entries and records of Edwards' own personal transactions; the subpoenas duces tecum in this matter which are directed to the various [fol. 65] trusts called for the production only of certain records of the various trusts therein specified; and counsel for the Commission requests that this investigation be recessed until Monday, April 25, 1938, in order to afford opportunity to remove from the trusts records called for in the subpoenas duces tecum any entries or records of transactions therein which are not entries or records of the trusts. Counsel for the Commission further requests that the Examiner direct that the subpoenas duces tecum remain in full force and effect, and that the matter be recessed until

Monday, April 25, 1938, at 10 o'clock a. m. at 103 United States Court House, Fort Worth, Texas.

Mr. McCutcheon: Now comes the Respondent by his attorney J. Forrest McCutcheon and moves the Commission to pay for the cost of the deletion and rewriting of the records of H. R. Edwards in order that only the trusts records may be made available to the Commission, pursuant to counsel for the Commission prior hereto.

The Examiner: The motion of Respondent is overruled for the reason that I do not understand that the Examiner is clothed with such authority as would justify him in incurring or in causing the Commission to be obligated for the expense which would be entailed.

Mr. McCutcheon: In connection with that, Mr. Edwards, are you financially able to do that for the Commission?

Mr. Aston: Are you calling Mr. Edwards as a witness?

Mr. McCutcheon: Yes, he was sworn yesterday.

Mr. Aston: He was not sworn yesterday.

Mr. McCutcheon: Do you want to swear him?

Mr. Aston: I am leaving that to you.

Mr. McCutcheon: Are you able to reconstruct these books, are you able to do it in order to show the trusts records from your own records?

Mr. Edwards: I am not.

Mr. McCutcheon: Now comes the Respondent, H. R. Edwards, through his counsel, J. Forrest McCutcheon, and would respectfully show unto the Examiner that counsel has been advised by the United States District Attorney of [fol. 66] Oklahoma City, Oklahoma, for the Western District of Oklahoma, that he has a report from the Securities and Exchange Commission, or some Government Bureau of the United States, and that he is subject to presentment to a grand jury immediately, and that in his opinion he will be indictment, therefore, since the case reposes in the state of Oklahoma, the Examiner is respectfully requested to transfer and move this hearing to some designated point in Oklahoma in the jurisdiction where Mr. Edwards resides, that is in the Western District of Oklahoma, for further hearing.

The Examiner: Does counsel care to comment on this last suggestion?

Mr. Aston: Counsel for the Commission has no objection whatever as to transferring a continuation of this matter

some designated place in Oklahoma which would be more convenient to Respondent in this matter.

The Examiner: Let the record show that the Examiner sustains the motion of Mr. C. W. Aston, counsel for the Commission and that counsel for Respondent has stated that same is agreeable to him and that the investigation is hereby recessed until Tuesday, April 26, 1937, at 10 o'clock a. m. in the grand jury room of the United States Court House at Oklahoma City, with the understanding that subpoenas heretofore issued and served in this matter will remain in full force and effect.

We will stand at recess until the time and at the place named.

(Whereupon the hearing was recessed.)

Room 709, Federal Building, Tuesday, May 3, 1938

Oklahoma City, Oklahoma

Met, pursuant to notice of the Commission at 10:10 o'clock a. m.

Before R. F. Milwee, Jr., Trial Examiner

Appearances:

C. W. Aston, Attorney for the Securities and Exchange Commission, Ft. Worth, Texas. J. Forrest McCutcheon, Attorney for H. R. Edwards and all Respondents except Roger B. Binger.

[Vol. 67]

Proceedings

The Examiner: For the purpose of the record I will state that this is a continuation of an investigation which was ordered by the Securities and Exchange Commission, Washington, D. C., at a regular session of that body on the 28th day of February, 1938, for the purpose of determining whether Edwards Petroleum Company, H. R. Edwards, both individually and as trustee, Roger B. Binger, Lucky Indian Trust, Edwards Indian Chief Trust, Indian Chief Additional Development Trust, Indian Chief Protection Lease Trust, and Edwards Combined Trust, and the Officers, Agents or employees have violated or are about to violate

the provisions of Sections five or 17 of the Securities Act of 1933 as amended.

I also wish to state for the information of the reporter that this is a private investigation and that all stenographic notes in connection therewith should be turned over to the Examiner conducting the investigation and that without the Certificate of Approval of the Commission, copies of the transcript or transcripts may not be sold to any parties other than the Commission.

Mr. McCutcheon: At this time, Mr. Examiner, the respondent Edwards makes request for a copy of the transcript of this proceeding. I would like for you to rule on it.

Mr. Aston: Mr. Examiner, in view of the rules and regulations of the Commission with regard to making copies of transcripts at private investigations available to the respondent or to any other parties, I move the Examiner to refuse, overrule the request of counsel for the respondent at this particular time. It is my opinion that such a request would properly have to be made direct to the Commission.

Mr. McCutcheon: I want to add to my motion, Mr. Examiner, that the respondent Edwards in connection with his motion just made; of course, will expect to pay the proper fee for such transcript.

The Examiner: I will just indicate in the record, Mr. McCutcheon, that will be a matter that will have to be presented to the Commission and I cannot have the reporter make available a copy of the transcript without the order of the Commission.

Mr. McCutcheon: I take it my motion is overruled, then.
[fol. 68] The Examiner: Yes.

Mr. McCutcheon: To which we except.

The Examiner: Are you ready to proceed, Mr. Aston?

Mr. Aston: I am, but on that particular motion made by Mr. McCutcheon may I suggest that Mr. McCutcheon make his request for a copy of the transcript of the proceedings of this matter direct to the Commission and that the Trial Examiner at this time waive passing on this motion. I think it is proper that the motion of the respondent's counsel be made direct to the Commission and not to the officers.

The Examiner: I am not overruling his motion or anything, I am merely stating that is a matter that will have to be presented to the Commission if you want a copy of the transcript.

Mr. McCutcheon: We expect to do that, however, we do not want to be in the attitude of waiving that demand.

The Examiner: You have just made a request for a copy and I stated that is a matter peculiarly up to the Commission to make those copies available. You can present that to the Commission and it will show on the report here you have made that request.

Mr. McCutcheon: Pardon me, off the record.

(Thereupon a discussion was had off the record.)

Mr. McCutcheon: At this time, Mr. Examiner, may it be stipulated between counsel for the Commission and for the respondent Edwards that this proceeding is a continuation of the hearings held at Ft. Worth, Texas, on April 18 and April 19 pertaining to the same matter under inquiry here today and that respondent Edwards appears here pursuant to the same subpoenas duces tecum heretofore served on him by an officer of the Commission. May that be agreed on?

Mr. Aston: That is agreeable, yes.

Mr. McCutcheon: May I ask one more question then I will sit. I would like to ask Mr. Edwards this question: Mr. Edwards, in any testimony that you might give at this hearing either orally or documentary or otherwise or in the presentation of any books, records or other papers, do you [L. 69] claim your immunity against self incrimination as heretofore claimed at the previous hearing in this matter?

Mr. Edwards: I certainly do.

Mr. McCutcheon: That is all.

Mr. Aston: Mr. Examiner, for the purpose of the record in order to clarify the present status of this investigation with regard to the respondent's appearance at the investigation, I might make the following statement for the record: On April 18th, 1938, as is shown in the transcript of the proceedings of that date, Mr. Edwards brought with him to the proceedings at Ft. Worth, Texas, in the office of the Securities and Exchange Commission, the books and records of the various trusts that were subpoenaed on April 12, 1938. It is stated that the records of the various trusts contained records of his own personal business transactions. The records, although they were brought to the proceedings at that time, were not accepted. The investigation was resumed until the following day, April 19, 1938. It was con-

vened again on April 19, 1938, at the offices of the Securities and Exchange Commission at the U.S. Court House at Ft. Worth, Texas, and at that time the respondent Edwards appeared with counsel, J. Forrest McCutcheon and Earl Heemann and brought with him again at that time the books and records of the various trusts subpoenaed. The records, although they were brought to the proceedings, were not accepted at that time for the reason as stated and as is shown in the transcript of the proceedings of that date because it was contended by the respondent, H. R. Edwards, that the trust records contained records of his own personal business transactions. The investigation which was convened on that day, April 19, 1938, was recessed again until April 26, 1938, for the purpose as was stated at that time in the record to afford the respondent Edwards time to delete or separate his personal records from the records of the various trusts which has been subpoenaed on April 12, 1938. On April 25, 1938, it was agreed between Mr. McCutcheon, counsel for Mr. Edwards, and O. H. Allred, an officer of the Commission designated as one of the trial examiners in this matter, that the continuation of this investigation would be postponed until this the third day of May, 1938, and was to be convened in the grand jury room of the Federal Building at Oklahoma City.

Mr. McCutcheon: At that point I want this in the record. [fol. 70] At that point, Mr. Aston, I want the record to show that the request for a continuance came from Mr. Allred, he having stated to counsel for the respondent Edwards that he was engaged in other matters at that time and could not appear and there was no conversation whatsoever between counsel, that is between myself and Mr. Allred with reference to the deletion of the record or the tearing apart of them to segregate the personal entries from the trust entries.

Mr. Aston: I think that is correct, during the long distance telephone conversations between you and Mr. Allred on April 25.

Mr. Aston: Mark that as Commission's Exhibit No. 1.

(The order of the Commission for the investigation in this matter was thereupon marked Commissioner's Exhibit No. 1.)

Mr. Aston: Mr. Examiner, I offer in evidence Commission Exhibit No. 1, same being an original of the order of

the Commission for the investigation in this matter. I would like to stipulate for the record if it is agreeable with counsel for respondent that a certified copy of this original order may be substituted at any time for the original.

Mr. McCutcheon: Oh, yes, that is all right.

Mr. Examiner: Let it be received.

Mr. McCutcheon: That is certainly all right. Mr. Examiner, I want to state for the purpose of the record that the books and records and other documents that Mr. Edwards presented to the Examiner at Ft. Worth at the hearing on April 18 and 19, that the books, records and documents of the various trusts that he had are held in his automobile down on the street. The reason they were not brought up was because of the volume and we wanted to await the ruling of the examiner. They are the same as if in the room, so to speak, and made available.

Mr. Aston: They are made available?

Mr. McCutcheon: Yes, within half a block.

Mr. Aston: Now, with reference to that same point, Mr. Edwards, may I ask whether that the books are in the same condition now that they were when you presented them at the last proceedings in this matter?

[fol. 71] Mr. Edwards: Just the same.

Mr. Aston: The records of your personal transactions and business that you have heretofore stated are contained in the records of the various trusts have not been separated or deleted from the trust records?

Mr. Edwards: No.

The Examiner: I understand the statement of Mr. Edwards that the books and records called for in the subpoenas are available but they are in the same condition as they were when presented at the last date of the investigation, is that correct?

Mr. Aston: That is as I understood it. Is that correct?

Mr. Edwards: That is correct.

Mr. McCutcheon: I may state this for the record. I am trying to get these preliminaries over. Mr. Edwards, is it possible to separate your personal entries reflecting your personal individual business from the trust business without having an auditor to set up a complete new set of books?

Mr. Edwards: No, it is necessary to set up a complete new set of books.

Mr. McCutcheon: Now I am through.

The Examiner: In view of the position which the respondent has taken in this matter, that is in producing the books and records called for *the in* subpoenas served on him on April 12, 1938, with the statement that such books contained not only the records of the trusts involved but also certain records of personal and individual transactions of H. R. Edwards, I wish to have the record show that the Commission has not subpoenaed and has not and does not desire the examination of any records save and except those which relate solely to the various trusts named and the subpoenas, and in order that there may be no misunderstanding, I, as an officer of the Commission designated as such for the purpose of the investigation of this matter now advise the respondent, H. R. Edwards, and his attorney, who is here present, that he may disregard the original subpoenas dated April 12, 1938, and that the said subpoenas are hereby dismissed and I will now serve the respondent with entirely new subpoenas and call particular attention to the fact that the new subpoenas call for the production only [fol. 72] of certain original books and records of the trusts therein specified or copies thereof. In order that no hardship may be put upon the respondent in complying with the new subpoenas I invite particular attention to the fact that the new subpoenas are not returnable until the third day of June, 1938, thus allowing a period of five full weeks in order to comply with the new subpoenas.

Mr. Aston: Mr. McCutcheon, in view of the matter which you and I discussed at Ft. Worth here some time ago the subpoenas were made returnable here in Oklahoma City as I understood it would be more convenient to you as well as to Mr. Edwards.

Mr. McCutcheon: We appreciate that if it is not too great an inconvenience to the Commission, and we want to cooperate with you.

Mr. Aston: I understood it would be more convenient to have them returnable here.

Mr. McCutcheon: It would be.

Mr. Aston: I move that the investigation in this matter. Mr. Examiner, be recessed until the third day of June, 1938, and be convened again at that time in the grand jury room of the Federal Building in Oklahoma City.

The Examiner: So ordered.

(Thereupon, at 10:30 A. M. May 3, 1938, the hearing in the above-entitled matter was recessed until the third day of June, 1938.)

Filed June 19, 1940. Robert B. Cartwright, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 2078—April Term, 1940

J. Forrest McCutcheon for Appellant.

Charles E. Dierker, United States Attorney, (John Brett, Assistant United States Attorney, was with him on the brief) for Appellee.

Before Phillips and Bratton, Circuit Judges, and Murrah,
District Judge

OPINION—June 29, 1940

[fol. 73] BRATTON, Circuit Judge, delivered the opinion of the court:

An indictment containing eleven counts was returned against appellant and a co-defendant. The charges related to the formation of certain business trusts in Oklahoma for the production of oil, the issuance, sale and delivery of units or certificates of beneficial interests in such trusts, the unlawful use of the mails, and the formation of an unlawful conspiracy. The first and second counts charged violations of section 17(a)(1) of the Securities Act of 1933,¹ as amended,² the third charged a violation of section 17(a)(2); the fourth charged a violation of section 5(a)(1); the fifth charged a violation of section 5(a)(2); the sixth, seventh, eighth, ninth and tenth each charged a use of the mails in furtherance of the scheme or artifice to defraud, in violation of Section 215 of the Criminal Code;³ and the eleventh charged the formation of a conspiracy to violate the provisions of the Securities Act and the mail fraud statute, in violation of section 37 of the Criminal Code.⁴

¹ 48 Stat. 74.

² 48 Stat. 881.

³ 18 U. S. C. A. 338.

⁴ 18 U. S. C. A. 88.

A demurrer to the indictment and a plea in bar thereto were severally denied, and a plea of nolo contendere was thereafter interposed. The court found appellant guilty of the offenses charged and sentenced him on each count to a term of three years in the penitentiary with provision that the sentences should run concurrently.

The plea in bar alleged that on three separate occasions, in response to subpoenas duces tecum issued and served upon him, appellant appeared before an officer of the Securities and Exchange Commission with the books and records called for in such process, and despite his claim of immunity against self incrimination and under compulsion testified under oath in respect of his identity and relationship to various trusts and organizations which were the subject matter of this prosecution, and that the evidence adduced by the commission had been transmitted to the Attorney General for criminal prosecution. The prayer was that the court require the commission to produce and submit to him a transcript of his testimony, that he be heard on the merits [fol. 74] of the plea, and that the testimony having been given in such circumstances the prosecution be barred and the charges dismissed. Section 19(a) of the Act empowers the commission to make rules and regulations, and Rule IV, promulgated under such authority, provides that hearings shall be stenographically reported and that the official reporter will furnish transcripts to the parties at such rates as may be fixed by contract between the commission and the reporter. But the act authorizes the commission to conduct investigations and hearings, and the rule is plainly limited to hearings. It has no application to testimony taken in the course of investigations as distinguished from hearings. In *re Securities and Exchange Commission*, 84 F. (2d) 316, reversed with direction to dismiss on the ground that the cause was moot, 299 U. S. 504; *Securities and Exchange Commission v. Torr*, 15 F. Supp. 144. While certain allegations in the plea refer to the proceedings before the commission as hearings, it is nowhere alleged that they were hearings. For aught that appears in the plea petitioner may have appeared and testified in the course of an investigation as distinguished from a hearing. In such event he was not entitled to a transcript of his testimony. In *re Securities and Exchange Commission*, supra; *Securities and Exchange Commission v. Torr*, supra. Moreover, the rule does not purport to provide that a court shall in a crim-

inal case direct the furnishing of such transcript. At most the prayer that the transcript be furnished was addressed to the sound discretion of the court, and it cannot be said that the court abused such discretion in denying it.

Section 22(c) of the act provides that no person shall be excused from testifying or producing books or documents before the commission or any officer designated by it on the ground that the testimony or documentary or other evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but that no individual shall be prosecuted for or on account of any transaction, matter or thing about which he is compelled to testify, after having claimed his privilege against self incrimination. The burden rested upon appellant to prove that he was served with process requiring him to appear and produce certain books and records relating to the subject matter of the prosecution, that he claimed his immunity against self incrimination, and that despite such claim he was required to testify concerning his identity and relationship to the [fol. 75] trusts and organizations referred to in the indictment. The record fails to indicate that any evidence was offered to sustain these allegations of fact. And in the absence of such evidence the plea was properly denied. *Lee v. United States*, 91 F. (2d) 326, certiorari denied 302 U. S. 745; *Williams v. State*, 6 Okla. Cr. 373, 118 Pac. 1006; *Robbins v. State*, 12 Okla. Cr. 294, 155 Pac. 491; *Salyers v. Commonwealth*, 118 S. W. (2d) 208.

The demurrer challenged each count in the indictment. Count eleven charged in conventional language a conspiracy to sell the securities and to use the mails in connection therewith in violation of the Securities Act and of the mail fraud statute. That count was attacked on the single ground of failure to charge that the securities were not of the class exempted under section 3 of the Securities Act, as amended. The section provides that the provisions of the title shall not apply to the classes of securities described therein, and that the commission may from time to time add other classes to the exempted categories. The effect of the statute is to except from the scope and operative effect of the title the described classes of securities and others which may be added by the commission. It is clear from the face of the count that the securities described therein do not come within the classes described in the statute. Ordinarily an exception created by a proviso or other distinct or substan-

tive clause of a criminal statute need not be negated in an indictment. One relying upon such an exception must set it up and establish it. *Ledbetter v. United States*, 170 U. S. 606; *McKelvey v. United States*, 260 U. S. 353; *Nicoli v. Briggs*, 83 F. (2d) 375; *Knight v. Hudspeth*, (10th) — F. (2d) —, decided May 20, 1940. And an indictment charging a conspiracy to violate a statute need not negative an exception contained in such statute either by proviso or other distinct or substantive provision. *Manning v. United States*, 275 F. 29. We have no difficulty in reaching the conclusion that count eleven charged an offense and was not open to the attack directed against it.

The other counts were challenged on entirely different grounds. But there is no need to explore the questions presented in connection with them as the well recognized rule is that a judgment will not be disturbed on appeal where there was a general verdict or finding of guilt on an indictment containing several counts, some of which are [fol. 76] good and some fatally bad, and the sentences run concurrently and do not exceed that which was properly imposed under the good count or counts. *Claassen v. United States*, 142 U. S. 140; *Haynes v. United States*, 101 F. 817; *Martholomew v. United States*, 177 F. 902, certiorari denied, 217 U. S. 608; *United States v. Lair*, 195 F. 47, certiorari denied, 229 U. S. 609; *Aczel v. United States*, 232 F. 652; *Little v. United States*, 93 F. (2d) 401, certiorari denied, 303 U. S. 644.

The remaining ground of demurrer was that the indictment was not signed by the foreman of the grand jury. It was signed by an assistant United States attorney, and was endorsed "A true Bill, Ernest W. Clarke, Foreman." It is argued that the endorsement is no part of the indictment, that the endorsement fails to show that Clarke was foreman of the grand jury that returned the indictment, and that he may have been foreman of something else. No federal statute has been called to our attention providing that the foreman of the grand jury shall sign an indictment at the bottom thereof, and it has been the settled practice of wide use for the United States attorney or his assistant to sign indictments and for the foreman of the grand jury to sign below the endorsement "A True Bill" on the face of it. While it would have been better practice for the word "Foreman" in the endorsement to be followed by the words "of the grand jury" that was not essential to the validity

of the indictment. United States v. Plumer, 27 Fed. Cas. No. 16,056; State v. Valere, 3 So. 186; Swain v. State, 62 So. 446; State v. Patterson, 90 So. 532; State v. Gilson, 90 S. W. 400; Hall v. Commonwealth, 130 S. E. 416.

We fail to find error. Accordingly the judgment is

Affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—June 29, 1940

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and [fol. 77] adjudged by this court that the judgment and sentence of the said District Court in this cause be and the same is hereby affirmed; and that United States of America, appellee, have and recover of and from Hiram R. Edwards, appellant, its costs herein.

(On July 11, 1940, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.)

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR ORDER DIRECTING CLERK TO FILE PETITION FOR REHEARING AND STAY OF MANDATE AND RECALL THEREOF—
Filed July 22, 1940

To the Honorable, the Circuit Court of Appeals for the Tenth Circuit of the United States:

Comes now Hiram R. Edwards, Appellant in the above entitled and numbered cause and respectfully makes application of and moves the Court to direct the Clerk of this Court to file his Petition for Rehearing and Motion for Stay of Mandate herein as of the 12th day of July, 1940, the date that the same was submitted to said Clerk by Appellant for filing, and for his reasons therefor and in connection therewith states as follows:

That a judgment of conviction in the United States District Court for the Western District of Oklahoma was by this Court affirmed and judgment entered on the 29th day of June, 1940, and that thereafter, to-wit, on July 12, 1940, Appellant filed with the Clerk of this Court in Denver, Colorado, twenty-one printed copies, with proper service shown, of his Petition for Rehearing and his Motion to Stay the Mandate pending his filing a Petition for Writ of Certiorari to the Supreme Court of the United States in the event the Petition for Rehearing be denied.

That the filing of said Petition for Rehearing and Motion for the Stay of the Mandate was duly and properly done within ten days after the date of the judgment of this Court, in accordance with the rules of this Court and the Rules of Practice and Procedure promulgated by the Supreme Court of the United States on May 7, 1934, pursuant to the Act of Congress approved March 8, 1934 (28 U. S. C. A. sec. 723 (a)).

That notwithstanding the Clerk of this Court returned to [fol. 78] Appellant all copies of his Petition for Rehearing with his letter of transmittal acknowledging the receipt of said Petition for Rehearing on the 12th day of July, 1940, but refused to file the same, his reasons being that Sundays and legal holidays, as provided for in the Rules of Practice and Procedure promulgated by the Supreme Court as aforesaid, to be excluded, were not to be excluded in the computation of time for the filing of such Petition.

Appellant respectfully tenders herewith the twenty-one copies of said Petition for Rehearing and respectfully prays the Court to direct the Clerk of this Court to accept and file the same, and Appellant further prays the Court to recall the Mandate which the Clerk of the Court has sent to the Clerk of the Trial Court and that in accordance with his prayer contained in his said Petition for Rehearing this Court enter an order staying the Mandate in order to permit Appellant to file his Petition for Writ of Certiorari to the Supreme Court of the United States in the event his Petition for Rehearing herein be denied.

Respectfully submitted this 22nd day of July, A. D. 1940, it being hereby certified by Counsel that a true and correct copy of this motion has been this day served on the United States Attorney for the Western District of Oklahoma, at Oklahoma City, Oklahoma, by placing the same in the

United States mail with proper postage and with proper address.

J. Forrest McCutcheon, 801 Perrine Building, Attorney for Appellant.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER GRANTING LEAVE TO FILE PETITION FOR REHEARING, ETC.

—July 22, 1940

This cause came on to be heard on the motion of appellant for leave to file twenty printed copies of petition for rehearing and stay of mandate herein out of time, and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said motion be and the same is hereby granted, and that twenty printed copies of appellant's petition for [fol. 79] rehearing and motion for stay of mandate herein may be filed with the clerk of this court instantler, which is accordingly done.

IN UNITED STATES CIRCUIT COURT OF APPEALS

PETITION FOR REHEARING AND MOTION TO STAY MANDATE—

Filed July 22, 1940

To the Honorable, the United States Circuit Court of Appeals for the Tenth Circuit:

Comes now Hiram R. Edwards appellant in the above entitled and numbered cause, and respectfully petitions and moves the Court to grant him a rehearing and reconsideration herein of the judgment and opinion of this Court, the same having been entered on the 29th day of June, A. D. 1940, and moves for a stay of the mandate herein, and for reasons and grounds therefor, it is respectfully shown as follows, to-wit:

The Court erred in sustaining the action of the Trial Court in overruling appellant's plea in bar and his application for production of the transcript of evidence taken before the Securities and Exchange Commission.

We submit that the provisions of the Fifth Amendment to the Constitution, providing that "no person * * * be compelled in any criminal case to be a witness against himself," is elementary and we deem it unnecessary to enlarge on that part of the Constitution, however, we respectfully submit that the Court did not give due consideration to that inalienable part of the free rights of the American people as set forth in the document of our forefathers, upon which all of our laws that have been upheld by the courts were based.

Appellant has not had the opportunity of having before him a copy of the opinion of the Court herein, however, taking into consideration some of the questions of the Court at the time of the presentation of the case, we feel that the request and prayer of appellant in his motion before the Trial Court for the production of a true and correct copy of the transcript of his testimony against himself, after having claimed his immunity against self incrimination, under the provisions of Section 22(c) of the Securities Act of 1933, did not require any further proffer of proof.

Appellant requested the court to hear him on the merits of his plea in bar. The court refused that request. Appellant excepted thereto.

[fol. 80] We submit that a second request, a third request, a fourth request or other requests would not have made appellant's position any stronger.

Appellant's plea was verified and the answer of the Government was not sustained by the court. The response was overruled.

We respectfully submit, therefore, in accordance with the brief heretofore submitted, that this Court erred in affirming the judgment of the Trial Court in overruling appellant's plea in bar and the failure and refusal of the Trial Court to receive in evidence a true and correct copy, under proper cross-examination, a transcript of the evidence and testimony of appellant before the Securities and Exchange Commission.

Appellant further says that this Court is in error in having received in evidence the purported affidavit of an Assistant United States Attorney, attempting to show that said transcript was offered by the Government, but refused by the court.

Appellant further says that this Court is in error in having received in evidence the purported transcript of the

testimony of appellant before the Securities and Exchange Commission. The purported transcript was not certified to and counsel for the Government stated to the court that he was not present at the time the same was made and it is not conceivable to us that the same could be received in evidence in the Trial Court or in this Court.

It is likewise difficult for us to see how either of said purported instruments could be received by this Court, without proof of the correctness of the same and with no right of cross-examination on the part of appellant.

Neither of these instruments were in the record and this Court is not such that the same could be a trial de novo. It is surprising that the Government would refuse the appellant the right to test the correctness of such purported transcript and that this Court would receive in evidence de novo a mere affidavit of counsel for the Government.

This procedure may be correct, however, it is respectfully submitted that insofar as the humble experience in the practice of the law of counsel for appellant, it is a new deal innovation of the interpretation of the functions of a Federal Appellate Court.

[fol. 81] It is further respectfully submitted that this Court erred in affirming the judgment of the Trial Court in that the demurrer to the indictment should have been sustained for the reasons set forth therein and as set forth in appellant's brief.

It is further respectfully submitted that this Court erred in affirming the judgment of the Trial Court inasmuch as the judgment of the Trial Court did not find appellant guilty of the offenses charged and the sentence of three years on the eleventh count of the indictment was and is illegal since the same was a charge of conspiracy under the law providing that the maximum punishment therefor, insofar as imprisonment is concerned, be two years.

Wherefore, appellant respectfully prays this Honorable Court to grant him a rehearing and reconsideration herein and that a stay of the mandate be granted, in order that he be permitted to file his petition for Writ of Certiorari to the Supreme Court of the United States, and that he be permitted to file additional briefs or make additional briefs or make additional arguments, in the discretion of the Court.

Respectfully submitted, this 10th day of July, A. D. 1940.

J. Forrest McCutcheon, Attorney for Appellant. .801
Perrine Building, Oklahoma City, Oklahoma.

Certificate of Counsel

I, the undersigned, J. Forrest McCutcheon, attorney and counsel for the above named Hiram R. Edwards, appellant, do hereby certify that the foregoing petition for rehearing is presented and taken in good faith and not for the purpose of delay.

J. Forrest McCutcheon.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING MOTION FOR RECALL OF MANDATE—July 22, 1940

This cause came on to be heard on the motion of appellant for the recall of the mandate of this court heretofore issued herein, and was submitted to the court.

[fol. 82] On consideration whereof, *is it* now here ordered by the court that the said motion be and the same is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—July 22, 1940

This cause came on to be heard on the petition of appellant for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 83] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 377

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Douglas took no part in the consideration and decision of this application.

Endersd on cover: File No. 44726. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 377. Miram R. Edwards, Petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed August 26, 1940. Term No. 377, O. T., 1940.